S. HRG. 103–345

S. 334, CLEAN CAMPAIGN ACT OF 1993; S. 329, CAMPAIGN ADVERTISING AND DISCLOSURE ACT OF 1993; AND S. 829, CAMPAIGN ADVERTISING ACCOUNTABILITY ACT OF 1993

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

MAY 13, 1993

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

67-922cc WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-043400-9

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S. 334, CLEAN CAMPAIGN ACT OF 1993; S. 329, CAMPAIGN ADVERTISING AND DISCLOSURE ACT OF 1993; AND S. 829, CAMPAIGN ADVERTISING ACCOUNTABILITY ACT OF 1993

THURSDAY, MAY 13, 1993

U.S. SENATE
SUBCOMMITTEE ON COMMUNICATIONS OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:15 p.m. in room SR–25, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Claudia A. Simons, staff counsel, and Moses Boyd, senior staff counsel; and Sherman Joyce, minority staff counsel.

OPENING STATEMENT OF SENATOR INOUYE

Senator INOUYE. I believe we will proceed with our opening statements, and by that time our first witness should be here.

I know that many people both in Congress and in the country have been concerned about campaigns for political office. There is a strongly held view that these campaigns are slick, superficial, and often misleading. As a result, the voter does not obtain the information necessary to reach an intelligent decision and cares little for the outcome. The low voter turnout of the past few elections lends credence to this belief.

Congress has been trying for some time to deal with concerns about political campaigns. While the omnibus campaign reform legislation is dealt with in other committees, the Commerce Committee has jurisdiction over a vital element—the use of broadcasting stations and certain other commercial media.

As we all well know, the largest percentage of campaign funds are spent on this media. Today, we are to hear testimony on three bills that address uses of the media in political campaigns. The chairman of the committee, Senator Hollings, the ranking member, Senator Danforth, and myself have introduced S. 334, the Clean Campaign Act.

This bill seeks to increase accountability and balance in campaigns for Federal office by first requiring a candidate, when discussing an opponent, to appear personally in broadcast advertisements and, second, providing a candidate with free broadcast time to respond to any advertisement opposing him sponsored by an independent party.

We will also consider S. 829, introduced by Senator Dorgan. The purpose of this bill is to enhance the information provided to voters by requiring candidates to air advertisements of longer durations.

Following our discussions of S. 334 and S. 829, we will examine the state of the lowest unit rate provision of the Communications Act and consider S. 329, authorized by the committee's ranking member, Senator Danforth.

S. 329 is designed to ensure that candidates can obtain the lowest unit charge for campaign advertisements. The Communications Act currently requires that candidates for political office be charged the lowest unit rate available for the class of time they seek to purchase.

Recently, it has been alleged that the rates charged for political advertisements have varied widely from candidate to candidate. S. 329 addresses these concerns by only permitting broadcasters to charge candidates the lowest rates during the time period requested and by prohibiting stations from preempting those ads. Mr. Chairman, your comments, please.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN.Today we are holding a hearing on several campaign reform measures that address issues in political advertising. S. 334, the Clean Campaign Act of 1993, which I introduced along with Senators Danforth and Inouye, addresses two specific problems that arise in the use of broadcast stations for political campaigns.

The first problem involves the use of broadcast time to attack opponents. While such attacks are not new, with the advent of sophisticated uses of electronic media, such attacks are becoming more and more insidious and are contributing less and less to the debate about candidates' qualifications for office. We all have seen and heard on the broadcast media just about every form of animal and every type of hired performer make incorrect or misleading remarks about a candidate's opponent. What's more, the very nature of the broadcast media makes these attacks difficult, if not impossible, to rebut, especially if they occur late in a campaign. Everyone who has run for office knows that rebuttals take plenty of time and are very expensive.

I know full well that we cannot limit—nor would we want to limit—a candidate's discussion of an opponent's character, record, and other qualifications to hold office. This discussion is a fundamental part of political campaigns. On the other hand, the objective of this activity is to inform the voter so that an educated choice can be made. The voter deserves a clear and direct discussion, which should not occur through surrogates who have no real responsibility. Thus, I am proposing that if a candidate wants to discuss an opponent in a broadcast advertisement, the candidate should do so in person. In this way, candidates can discuss whatever they wish about their opponents, while being more responsible for what they say.

The second problem involves the use of PAC money to air advertisements on broadcast stations. We all have seen how PAC's can damage seriously the balance in a campaign through the expenditure of enormous amounts of money. In effect, a candidate budgets

to fight one well-financed opponent but then ends up fighting many.

While the existing political broadcasting laws give a candidate equal opportunities with respect to an opposing candidate, the laws offer far fewer protections when it comes to PAC's—and even these protections will evaporate if the Federal Communications Commission has its way. The current requirements for lowest unit advertising rates, free response time, or just the ability to respond promptly, do not apply with PAC's. In addition, when a candidate responds to a PAC, the candidate then triggers the equal time provision of the law. In the end, the candidate finds that one statement brings two or more on the other side. How can the candidate hope to compete fairly? To cure this problem, my legislation again takes a straightforward approach, which in no way limits the ability of PAC's to advertise. If a broadcaster airs PAC advertisements, the broadcaster then must give the candidate who is opposed or otherwise not supported in those ads free response time within a reasonable period.

In conclusion, the approach taken in this legislation is reasonable and infringes on no person's free speech rights. It will improve the accountability of candidates and the balance in campaigns. In the end, the public will benefit by having the best information possible on which to make an intelligent choice.

In addition to S. 334, this hearing today addresses Senator Danforth's bill, S. 329, and Senator Dorgan's bill, S. 829, which deal with the rates charged for political advertisements. This committee has long been concerned that political candidates have reasonable access to broadcast stations and that there be no discrimination in the rates charged for campaign advertisements. The lowest unit rate provision of the Communications Act of 1934 was adopted specifically to address that concern.

The lowest unit rate provision, adopted in 1972, requires broadcasters to charge candidates the lowest unit rate available for the time during which the advertisements are aired. We now hear charges that the lowest unit rate provision is not being applied properly—candidates are being charged more than the lowest unit rate. This fact disturbs me greatly, as candidates already spend too much time raising money just to get on television. I look forward to hearing the views of the witnesses here today on all the bills before us.

Thank you, Mr. Chairman.

Senator INOUYE. Thank you, Mr. Chairman. Whenever the Senate discusses campaigns for public office, we always have 100 in-house experts, and we will soon be hearing from one of our in-house experts, Senator Dorgan, but before we do I would like to recognize the ranking member of the committee, Senator Packwood.

OPENING STATEMENT OF SENATOR PACKWOOD

Senator PACKWOOD. Thank you, Mr. Chairman. This is not the first time this committee has approached this issue, and each time we approach it, I have some trepidation as to how far down this path we want to tread.

When this country was founded there were only eight daily newspapers. They were partisan, they were slashing, there was very little distinction between editorial and news comment, they took after incumbents and politicians with a vengeance, certainly as ferocious as any that exist today.

The incumbents and politicians hated the press, but our founders regarded it as so critical to the freedom of this Government that they clearly protected it in the first amendment, and I think they would have done the same to electronic broadcasting had they been able to conceive it at all.

It was simply beyond their ken to imagine that anything could be done beyond newspapers and pamphleteering and shouting with a megaphone to get your message across, but the message that was put across in those days was as bad, if you want to call it that, as anything now.

So, in my judgment the question becomes this: it is not that the quality or lack of it, of the political message has changed, or that the attack has changed, but because of the electronic media, do we need to regulate the form of political communication?

Do we say that it was not dangerous to this country 200 years ago, it was not dangerous to this country 100 years ago, it was not dangerous to this country, really, 25 or 30 years ago, so long as it was confined principally to print or pamphlets, but the very same kinds of attacks and comments transmitted electronically are such a danger to the political process of the country that the Federal Government must regulate it? That is what this is, is Federal regulation.

I do not close my mind to these bills, but I come at them with a grave suspicion about the Government putting any restrictions, and especially in the area of political communication, any restrictions on the right of anybody to say anything that they want in a political campaign about themselves or about their opponent.

Thank you, Mr. Chairman.

Senator INOUYE. Senator Danforth.

OPENING STATEMENT OF SENATOR DANFORTH

Senator DANFORTH. Mr. Chairman, thank you very much. Thank you for holding this hearing on a very important subject matter.

Let me first say that with respect to S. 329, this is legislation that is designed to close a loophole which was not intended when the lowest unit rate provision first came into being.

The practical problem that now exists is that commercial advertisers are often, I would say probably usually, charged much less than political advertisers because of the possibility of distinguishing between preemptible and nonpreemptible advertising in the sale of time.

Commercial advertisers are sold preemptible time. In fact, if they are good advertisers, good customers, they are not going to be preempted, and it does not matter that much if they are preempted, because the product, hopefully for them, is going to be on the market for months or years.

A political campaign is very time sensitive and therefore candidates normally require that their ad is shown on the day, at the time, that they have produced it for. So, because of the difference

between preemptible and nonpreemptible time, political candidates can be charged a multiple of what commercial advertisers are charged.

There is also the possibility of abuse, and there have been cases where we suspect abuse, where a broadcaster can sell a favorite candidate preemptible time at a low rate, and with basically a wink to the effect that "you are not going to be preempted in reality," whereas the less favored candidate would be told, "well, you had better watch out, you could be bumped, and you better buy the nonpreemptible time."

So, this is an issue where—an area where there is the possibility of abuse, and where the effect of the law now is not what was originally intended, and I think it is time to adopt S. 329 and correct this problem.

Now, with respect to the so-called Clean Campaign Act, Congress now regulates campaign advertising. This is an issue that is not novel. It has already been done. The candidate has to make certain disclosures. A disclosure is that the foregoing message has been paid for by the Blokes for Senate Committee, or whatever. That is the tag line that occurs in commercials.

The problem is that it is often hidden, and the reality is that either the committee does not exist, or it is a name-only committee, and so the candidate is not really responsible for the commercial. The candidate is ducking behind a nominal committee which purports to be the sponsor of the commercial.

It is a dodge. It is the opposite of disclosure, it is a subterfuge, and to me, disclosure, putting the facts before the public, is not an impediment to free speech.

Under this legislation, a candidate can say anything the candidate wants to say. It can be just as vicious, just as mean, just as slimy as any commercial anybody wants to run, but if we are going to have disclosure, let us have real disclosure, not some fake committee that does not really exist, but the candidate appear with the candidate's face and the candidate's voice so that the candidate will take responsibility for the commercial.

A lot of talk has been going on in Congress about campaign reform. It almost always is campaign finance reform that people are talking about. In the opinion of this politician, campaign finance reform is a tiny part of the big problem. The big problem is that campaigns have gotten worse and worse and worse and worse, dirtier and dirtier and dirtier, and that is fine, if that is what people want to do, but at least let them be brave enough to show their own hands when they are throwing the mud.

Senator INOUYE. Senator McCain.

OPENING STATEMENT OF SENATOR McCAIN

Senator MCCAIN. Thank you, Mr. Chairman, and I believe that as Senator Packwood mentioned, one of the first hearings I attended as a member of this committee in 1987 was exactly on this issue and a review of various proposals, and I think it is an issue that is worth pursuing, although that does not increase my optimism that we will make any significant legislative changes in the near future.

But I would point out something that I think we are forgetting here. If we are really interested in making information known to the public about candidates and their views, and that is the simple fact that 70 to 80 percent of any candidate's campaign funds are spent on television.

It seems to me, then, the answer is not give them the lowest unit rate, because most challengers cannot afford the lowest or the medium or the highest unit rate, but to give them free TV time. That is what they do in England, that is what they do in other countries. Let us give them the time on TV for free, give people equal amounts of time, and that way they can have their views exposed and expressed over a significant length of time.

So, I am not so much worried about the negativism which creeps into all campaigns. What I am worried about is the ability of a candidate to expose him or herself to the voter, and frankly, when the incumbent can tie up and buy all the media by 7- or 8-to-1 margins in most cases, the average Senate race between challenger and incumbent, then there is not a level playing field, and until we find a way to give the challenger the kind of exposure that they need to be on equal footing with the incumbent, we are not going to have fair and equal campaigns.

Thank you, Mr. Chairman.

Senator INOUYE. Thank you. Senator Burns.

OPENING STATEMENT OF SENATOR BURNS

Senator BURNS. Thank you, Mr. Chairman.

I would have to agree quite a lot with my colleague from Oregon today that I think you have overriding in this legislation particularly some first amendment problems with what we are talking about, but it seems like every time we start talking about limiting advertising, or we get into this situation of trying to do something in campaign finance, I would have to say it always comes down to where we just start talking about broadcasters.

Maybe we should—in any other medium besides broadcasting and cable, such Federal policing and intrusion into the editorial judgment of journalists would be unthinkable.

For instance, in striking down a right-of-access statute for political candidates that applied to newspapers, the U.S. Supreme Court spoke of the statute intrusions into the function of the editorial process and concluded it, it has yet to be demonstrated how Government regulation of this crucial process could be exercised consistent with the first amendment guarantees of free press as they have evolved in time.

So, I have a suggestion today. If you just want to take a look at broadcast, let us take each of the proposals, including the administration's proposal in S. 3, and make it apply to all other mass communications media. Let us make it apply to newspapers and other mass media presentations.

If one were to find such proposals troubling and problematic, as I think I would, I would have a problem with that, then I would ask the simple question, how can we apply such a regulation to broadcasting and to cable, and I thank you, Mr. Chairman.

Senator INOUYE. Thank you very much, and now, Senator Dorgan.

OPENING STATEMENT OF SENATOR DORGAN

Senator DORGAN. Mr. Chairman, thank you very much. Let me start by saying I am not an expert in this area. I do not claim to be one. I am here only because I have an interest in campaign dialog, campaign issues, and how our campaigns are waged. I want to associate myself with the remarks of Senator Danforth. I not only support his legislation, but I also support the legislation of the chairman today.

We have to do something about campaigns. I became a constitutional officer of North Dakota at age 26. I have run 10 statewide campaigns—10 statewide campaigns. I have a lot of miles on me. I also have purchased a lot of television commercials and have had a lot of television commercials aimed at me in 10 years. So, I know a lot about issues and a lot about how people wage campaigns.

I have waged plenty of them that are aggressive. My own view over some 23 years now is that campaigns in this country have deteriorated badly. It has become a carnival of excess that is not thoughtful. It is more thoughtless than anything. And it is the wrong way, it seems to me, for us to conduct our political dialog.

Now, should we inject ourselves in some editorial way? Of course, we cannot do that. No one is suggesting that. There are no restrictions now on political debate and no one is suggesting that we impose any. At the moment, if in Montana I decided to sell soap and I bought 30-second ads for my soap, in which I deliberately misrepresented that soap by saying that if you use this soap on your cattle it will cure the most prevalent cattle disease in Montana; then the Federal Trade Commission would require that the ad be removed.

You simply cannot be untruthful about a commercial product, or you will be investigated and somebody is going to require you to discontinue your advertisements.

The same is not true in Montana, North Dakota, or any of the States that you gentlemen are from with respect to political debate. You can say whatever you want. The television station will not remove it, even if it is demonstrably untrue. I have had some experience with that. They will not discontinue the ad, even when it is demonstrably untrue vis-a-vis the facts.

So, there is not the same protection for truth in politics as there is in commercial advertising that exists today. This is deplorable in my judgment, but no one is suggesting that this be changed. I would like to see it improved. I would like to see that we get the same protection for truth in politics as we do in commercial advertising, but that does not now exist.

The reason I am here is that all of us understand the 500-pound gorilla in advertising is the 30-second ad in American politics. It is true in commercial products, as well. You carry around in your head, as do 8-year-olds and 80-year-olds, information that you do not seek out. You all know what tastes great and is less filling. You all know how you spell relief—R-o-l-a-i-d-s—not because you sought that information out but because these 30-second explosions are enormously powerful. They have changed a lot of our lives. In politics, they have changed the way we conduct political debate in America, in my judgment, a very deplorable way.

Should we, could we, will we regulate 30-second ads? Of course not, I am not here to suggest that. I am here to make a suggestion about one simple change. We now require lowest rate advertising during a certain period before a campaign. I am saying as an incentive to try to construct a more thoughtful kind of discussion of the issues in politics, that we limit the lowest rate requirement to advertisements that are 5 minutes in length and on which the candidate appears 75 percent of the time.

It might not be very interesting to watch some candidates for 5 minutes. But that may be the point. The 30-second blunt instrument that is the slash and tear negative with little regard to the truth in politics in the 1980's and 1990's ought not be given further incentive by saying yes, we will continue the lowest rate for 30-second ads.

I am not suggesting that you should not run 30-second ads. Run as many as you like. But why should you get the lowest rate on the rate card for running a 30-second ad? Why do we not decide it would be more thoughtful and more constructive in our political system to try to encourage ads that are 5 minutes in length in which we really discuss issues and in which the candidate who wishes to present his or her views discussing those issues?

Mark Twain once said that "a lie travels halfway around the world before the truth gets its shoes on." This is one of the problems in political campaigns. And I have thought about how would you construct something that tries to enforce some reasonable standards. But you just cannot get into it. I am not suggesting it.

So, I am not proposing anything here that deals with first amendment rights, with the editorial process. I am simply saying when we determine what we require for the lowest rate to be applied to political ads that are placed on television and radio stations, that I think it ought to apply to a certain kind of ad so that we provide an incentive for an ad that has a greater length to it, which I hope would promote a more constructive discussion.

So, I have offered that in the form of a bill. I know that broadcasters would not like it. They do not want to give up 5-minute blocks. They would sooner sell 30-second ads. I can think of a lot of other groups that would not like it. But I happen to think it is probably the right thing for us to try to do, and I hope you will give some thought to that as you construct a decision about whether there is anything we can do to improve the political debate in this country in television advertisements.

[The prepared statement of Senator Dorgan follows:]

PREPARED STATEMENT OF SENATOR DORGAN

Mr. Chairman, thank you for holding this hearing today on a number of bills that are before the senate Commerce Committee that address campaign commercials. As you know, one of the bills under consideration at today's hearing is my legislation that would apply the lowest unit rate for political commercials only to campaign commercials that are at least 5 minutes in length and in which the candidate appears in the commercial for at least 75 percent of the ad.

The legislation I have introduced will, I hope, provide a positive contribution to the debate on reforming the way campaigns are conducted in this country. Not only do we need to reform our current campaign financing system, but there is an equal need to change the way campaign funds are spent with respect to television commercials.

Unfortunately, political campaigns have moved further and further away from constructive, thoughtful debates on issues of real public concern. Instead, campaign

commercials have become electronic tennis matches of 30-second charges and countercharges across the airwaves. Demagoguery rules over substance in these electronic battles conducted through 30-second commercials. All of us in this distinguished body—Republican and Democrat, liberal and conservative—know the disservice political campaigns are providing the public through 30-second attack ads and sound bites crafted by the mercenaries of politics: political consultants.

We need to change that Mr. Chairman. Not for our sake as politicians but for the sake of the public which deserves to hear candidates debate important issues in a constructive manner. My legislation would place two new requirements on political commercials: First, as a condition of receiving the lowest unit rate, political commercials would have to be at least five minutes in length. Second, my legislation would require that the candidate would have to appear in the commercial, and in a clear image, for at least 75 percent of the time. These requirements would force candidates to communicate with voters in a more constructive basis than is possible in 30-second ads.

Two years ago Washington Post editor David Broder said: "the campaign dialogue must be rescued from the electronic demagoguery favored by too many hired-gun political consultants. Campaigns must be reconnected to governmental discussions voters really care about." Mr. Broder went on to say: "The public is sick and tired of being assaulted for weeks before Election Day with horrifying recitals of the opposing candidate's supposed record on some issue." I agree. My legislation is designed to help reconnect campaigns with constructive public policy debates—something we seem to have lost in an era where 30-second attack ads set the rules of political intercourse. The age of electronic communications and political consultants has turned our whole political system into a battle over sound bites and 30-second T.V. commercial volleys.

Although negative campaigns and personal attacks are not new to politics, the focus on negative tactics as the driving force of campaigns is a uniquely contemporary concern. Even Thomas Jefferson endured bitter attacks on his personal character in the first Presidential campaign in our nation's history. However, the advent of electronic communications, especially television, has provided an unprecedented opportunity to take bitter negative politics to a new level. The result has been a degeneration of campaign discourse to all time low.

Also, attempts to address this problem by trying to eliminate the short attack ads is not a novel approach. Others have sought to enhance the level of debate in political campaigns by proposing minimum time periods for campaign commercials. The campaign reform legislation that passed the Senate last year contained provisions that would have encouraged candidates to purchase advertising segments for longer length commercials. According to that legislation, candidates would receive reimbursement vouchers if they used commercial segments between one and 5 minutes. In addition, legislation was introduced in the House in the last Congress that would have required political commercials receiving the lowest unit rate to be at least one minute in length.

My legislation is indeed a bolder attempt to improve campaign discourse by requiring 5-minute commercials with the candidate appearing on the screen as a condition of receiving the lowest unit rate. It is my sincere hope that campaign reform legislation will be enacted this year. As we work on this legislation, I hope we will not only reform campaign financing but also find ways to help turn political advertising into a discourse on issues and away from an exchange of demagoguery.

I also want to comment briefly on the other two bills which are the subject of this hearing. Senator Danforth has developed a proposal that would shorten the time span in which broadcasters are required to provide candidates with the lowest unit rates for political commercials; prohibit broadcasters from setting distinctions between preemptible time and non-preemptible time on political commercials; and require political candidates to take responsibility for their ads. I support these provisions and I especially commend Senator Danforth for attempting to force political candidates to take responsibility for the ads they put on the air. It seems to me that Senator Danforth and I share a common goal in trying to move candidates away from irresponsible attacks on their opponents and toward a debate on issues of public concern.

Chairman Hollings' legislation, S. 334, the Clean Campaign Act, attempts to address the same concern by requiring candidates to make all references to their opponents in person on their ads. I support this objective.

Thank you once again Mr. Chairman for allowing me to testify before your Subcommittee on my legislation. I look forward to working with you and our colleagues on this Committee to try and improve campaign commercials in this country.

Senator INOUYE. Thank you very much, Senator Dorgan.

In your proposal, is it just limited to 5 minutes? I have not read the bill.

Senator DORGAN. Yes. I have simply said let us require that the lowest rate be applied to ads that are at least 5 minutes in length and on which the candidate appears 75 percent of the time.

Senator INOUYE. Anything below will not get this benefit.

Senator DORGAN. No. It does not, as some suggest, it does not benefit incumbents. The fact is I would bet that any of us in this room who have run for election are the ones that have purchased most of the 30-second ads. And the fact is incumbents are the ones that are buying most the 30-second ads. I do not know why, if we try to steer away from 30-second ads, that that is going to benefit incumbents. If incumbents continue to have more money and use more of the 30-second ads, this is probably going to hurt incumbents more than it would hurt anybody.

Senator INOUYE. What is the rationale for the 75 percent of the time appearance?

Senator DORGAN. Well, my rationale for that is I think pretty much the same as the rationale in the bill by the chairman. Increasingly, political debate is a representation about someone else's record by a candidate. I would like very much for a candidate to represent himself or herself in the context of political discussion, not only in terms of what they represent, the kinds of policies they want to pursue, what they believe is in the best interests of this country, but also in terms of how they view their opponent.

If they want to make an attack, God Bless them. Let them do and say whatever they want. But this nameless, faceless, 30-second explosion does no service to American politics, and I am simply saying you can do that if you want to. You just do not get the lowest rate. We just do not enforce the lowest rate for purchase if you do that. I am not talking about the content, I am talking about the 30-second ad. We provide the lowest rate, under my proposal, for a 5-minute ad with a candidate that appears 75 percent of the time.

Senator INOUYE. Most of the statewide candidates usually have, in the inventory of films, a documentary that runs for 15 or 30 minutes. It is usually slanted but positive. They do not say anything about the opponent. But the candidate would not appear for 75 percent of the time. That would not be covered; would it?

Senator DORGAN. No, it would not. Well, yes, at least—I would have to look at the length. I think it is at least 5 minutes in length, so I think anything over 5 minutes would probably be covered. But I have run 10 statewide campaigns and have never had a 30- or a 15-minute documentary. I do not object to them. Most of them are sort of positive pillow pieces that do not say very much, but, you know, it does not matter to me.

I am concerned about seeing if we cannot stop giving incentives for the 30-second ads that I think are polluting the political process.

Senator INOUYE. Senator Packwood.

Senator PACKWOOD. No questions, Mr. Chairman.

Senator INOUYE. Senator Danforth.

Senator DANFORTH. Well, I want to thank you for this idea. I am not sure that the form is exactly what I would have arrived at, but

I think that the problem is exactly right. You are correct in saying that the 30-second commercial is it in the modern campaign. That is it. And even a lot of the news coverage is about the 30-second commercial. And the 30-second commercial is almost always slash and burn advertising. And as Senator Packwood says, that is a right. I mean, let us have slash and burn, if that is what we want to do.

But the fact of the matter is that there is no possibility for anything else because there is virtually no possibility—I would say no possibility—to communicate with the public in anything longer than one-half a minute, or maybe 1 minute. I mean, can you buy a 5-minute spot? I think in most places, you cannot.

Senator DORGAN. Well, broadcasters do not want to sell it to you at this point, but if we change the process and most of the people in a political campaign are demanding 5-minute spots, 5-minute spots are going to become available.

Senator DANFORTH. Well, I think it is worth considering some way to provide 5-minute spots. I am not talking about day in and day out. I am talking about for, say 30 days before an election. I mean, I do not think that is too much to ask of the broadcaster or candidates. Just for 30 days every 2 years, provide 5-minute slots, or maybe some 15 minute, not even every day, just a few.

Allow the candidates to convey a message in something more than a 30-second period of time, because now, my impression is all you can buy is 30 seconds or maybe 1 minute.

So, I think it is a very, very serious concern, and something very much worth thinking about. And I thank you for presenting it.

Senator INOUYE. Senator Burns.

Senator BURNS. You pose a very interesting problem here. The problem we have, and I would imagine that our witnesses today will probably touch on this, is it is hard. That is not the way the programs are cut up, either in cable or in broadcast, where you have got a 5-minute slot.

Now, you have probably got a total of 5 minutes in there but there are no breaks in there that would give anybody 5 minutes, even in a newscast. And we are asking an industry to change their way of doing business to facilitate this, and we are not asking anybody else in any other media. That is the only comment I have.

Now, I have been in the broadcast business and I know what it is like to stand up there. I can give you a 5-minute broadcast right now. I mean, you can get up every morning at 5 o'clock. Sows are steady and boars are active. I can give you that market report and I can just roll it off, and I can be there for 5 minutes and I can break it for 30 and I can break it for 60.

But when you start breaking for 5's and you are in prime time television and your bread and butter depends on ratings, as soon as that, and I know somebody as ugly as I am come on there in the middle of Three's Company or whatever, and I have never seen prime time because I think it—it just has nothing to offer me, but when you get me on there for 5 minutes, that clicker is going to go just like that. And you are gone.

Now, this is practical. I mean, it might be the law and what we want to do, and the bad thing is you can also come out and sell your soap and cure my cattle or one leg will fall off or whatever,

but I will tell you what, if you file a complaint with the FTC that that is not right, or the FTC—FEC? FTC, the Federal Trade, I was right the first time—It will be 2 years before it makes it on the docket, the damage has already been done, the elation is gone, and everybody is setting in their seats. So that is not going to get it.

I do not know how you respond to that, and I guess I did not put it in the form of a question. I am just saying those are some of the problems that we run into.

Senator DORGAN. The Senator makes some good points. I mean, if I am advertising soap to cure blue tongue over there and it does not do anything to deal with that, somebody is going to force me to take that off. It might take a while, but I guarantee it will happen. It will never happen in politics.

The other question is if you are on for 5 minutes and somebody is tired of you after 2, I mean, that is a problem you have got as a candidate. I suppose many of us might have that problem.

Senator BURNS. There is no doubt in my mind.

Senator DORGAN. But I will tell you this, if we start talking about things that matter to people in politics, I am not so sure they will click that program off.

I want to make one final point, Mr. Chairman. I frankly do not care that much about advertising. In my Senate race last year, I spent more money and was prepared to spend more money than my opponent. At the start of this process, 6 months before the election, I said to my opponent, before we start I will make you an offer.

Let us, you and I, decide that neither of us will advertise at all anyplace, no television, no radio, no newspaper, and that we will put our money together and we will each buy 1 hour every week for 8 weeks prior to the campaign, and we will come with no notes and no aids and we will jointly agree on the moderator.

And every week, prime time, statewide, you and I will discuss why we want to run for public office, what we think about the issues. Let us run the most novel campaign in this country with no advertising but an opportunity for every North Dakotan to see us in a setting where we are required to talk personally about how we see the future of this country.

Now, my opponent decided, unwisely, I think, not to do that.

Senator MCCAIN. May I ask if you also agreed not to send out any free mail during that period of time.

Senator DORGAN. Yes. Largely I was prevented from sending out mail during that time.

Senator MCCAIN. During the year before the election?

Senator DORGAN. Well, I was endorsed on April 1, and I believe I was largely prevented from sending out mail because of the more recent restrictions.

Senator MCCAIN. You did not send out any letters to any constituents?

Senator DORGAN. Of course, I answered letters.

Senator MCCAIN. And he did not have that ability to do so.

Senator DORGAN. But you answered mail during the same period and that is an irrelevant point. My point is advertising, in my judgment, would better be dispensed with if we could have a more constructive debate. But the 30-second ad, as Senator Danforth has

said, has captured the pivot point of all politics in this country because it works. And what works best in 30-second ads is not some thoughtful discussion in 30 seconds about relevant issues, it is the slash and burn and slash and tear negative.

And I am not suggesting we ever regulate that or should. I am saying that I think we ought to see if we can provide the lowest rate incentive to something other than the 30-second ad.

Senator INOUYE. Senator McCain.

Senator MCCAIN. Well, just to follow up, I appreciate, if I had been the challenger of Senator Dorgan, which I am very grateful that I am not or was not, the fact is I would have asked him if he would forgo or pay for any letters that he sent.

Senator DORGAN. My point is that I did not send bulk letters to the constituents.

Senator MCCAIN. You did not send any mail?

Senator DORGAN. We answered constituents requests, as you did during the same period. But my point is that this is probably the only race in the country in which I offered a challenger.

Senator MCCAIN. This is an enormous advantage that incumbents have of free mail, and if Senator Dorgan had offered to pay for every letter out of his campaign funds that were sent to his constituents, it would have been much more of a level playing field.

We may disagree on that, but I think that most Americans would agree that incumbents have an enormous advantage, not only the kind of normal publicity that they generate by virtue of their office, but the fact that they can send, especially in a small State, many letters to their constituents, which they are able to correspond on a personal basis, which unfortunately, the challenger has to pay for.

Senator DORGAN. Mr. Chairman, the facts do not bear that out at this point. Ten years ago, the facts would bear that out, but we have radically changed the franking rules and, at least with—you might check the first quarter of this year for your franking costs and mine and so on. But the fact is there is not the massive franking going on in either the House or the Senate that used to go on.

Senator MCCAIN. Well, the fact is that there is an enormous amount of franking that goes on, especially in even number years. I think that is a fact that I would be glad to provide for the record.

Senator DORGAN. Probably a different hearing, Mr. Chairman, but they have been radically changed in both the House and the Senate, as all of you know.

Senator MCCAIN. Well, I would just continue by saying that the mailing still goes on. I have not yet known of an incumbent who is willing to spend his or her campaign funds to pay for that mail. And as long as that is the case there is an enormous advantage. And I would say that if we really want to reach an agreement, which obviously Senator Dorgan was proud that he offered to his opponent who turned it down, that part of that agreement, to make it equal, would have been that each pay for its own mail that went out to any constituent, whether it be from Washington, DC, or Sioux Falls, SD, or Fargo, ND.

But obviously, we are in disagreement with that. But I think anybody who has free mail and other people who do not, that the one who has the free mail has an advantage.

But that brings us back anyway to your initial point, and that is that I do not think it is easy for a local television station to devote 5 minutes of time. I guess maybe while I was out that that subject was already addressed. I think it is very difficult if we ask our broadcaster friends if they are willing to sell blocks of 5-minute time during prime time. They view that as disruptive to the viewing audience and are unlikely to give that much time.

But I certainly applaud the efforts of Senator Dorgan to bring about these changes, and I hope we will continue this dialog, Mr. President, because clearly the people in my State, they think that there is an enormous advantage that the incumbents have over challengers, and I think our job should be, as much as we can, to enact legislation which would level that playing field.

I thank you, Mr. Chairman. I thank the witness.

Senator DORGAN. I understand the point the gentleman made, you know, comparing mail to the 30-second ad is like comparing the Model T to a bullet train. But the issue here is the overwhelming influence of the 30-second television ad in campaigns, and that was what I was trying to respond to. But I understand the point the gentleman made, and I appreciate the subcommittee's attention to this issue.

Senator INOUYE. Thank you very much, Senator.

Before we call upon the panel, I have asked the staff to get a few samples of these commercials that concern us, so, if we may, if we can get the lights down.

[Television campaign advertisements were shown.]

Senator INOUYE. Now let us get back to business.

For the first panel, we have the director of the Committee for the Study of the American Electorate, Mr. Curtis B. Gans; the president of the Guggenheim Production, Inc., Mr. Charles E. Guggenheim; and the legislative counsel of the American Civil Liberties Union, Mr. Robert Peck.

Mr. Gans.

STATEMENT OF CURTIS B. GANS, DIRECTOR, COMMITTEE FOR THE STUDY OF THE AMERICAN ELECTORATE

Mr. GANS. Thank you very much, Mr. Chairman, for inviting me. I want to commend the chairman of the committee, the ranking minority member of the committee, and the chairman of the subcommittee for their continued vigilance on this issue. Maybe this is the year we might get something done.

I have appended to my testimony a version of the legislation before this committee, which I think is more constitutionally defensible than the one before this committee, but it is the same legislation which the chairman of the subcommittee has previously sponsored. It is added for your consideration, and I hope you will include it in the testimony.

Senator INOUYE. Without objection.

Mr. GANS. A few years ago, my friend and your former colleague, Senator Charles Mathias, began a speech by saying, "Why is it that campaign costs go up and voter turnout goes down?" Those two facts are essentially incontrovertible and in juxtaposition.

In 1974, the total spending for all our senatorial and congressional campaigns was $88 million. In 1992, it was $678 million. We have had a 400-percent rise in constant dollars.

With an up tick in 1992, which I think will turn out to be driven by the recession, driven by "read my lips," and driven by Ross Perot and therefore not sustainable, we have had essentially a decline of 20 percent in voter participation since 1960; 30 percent outside the South; 20 million people who used to vote no longer do so.

In the 1990 election, 16 percent of eligible 18- to 24-year-olds voted. In this election, with a 25-percent increase, 36 percent eligible 18- to 24-year-olds voted. We now continue to have, if you count our midterm and Presidential elections, the lowest participation of any democracy in the world. And I think, after 17 years of study, that it is no coincidence that this has occurred with the rise of television and its centrality in American political campaigns.

Images, as we have seen, have taken the place of issues. The periphery has taken the place of the pertinent. Distortion has taken the place of dialog. Dishonesty has taken the place of discussion. Actors playing Fidel Castro have taken the place of the actors that should be in the forefront, which are the candidates.

It derives from the insatiable desire to win no matter what the cost of that winning is, even if it civility, respect for the political system and the feelings of honor about the officeholder. It begins with the hiring of a political consultant and the technology of negative research, the tracking poll, and the 30-second spot.

Candidate A is behind candidate B—sees that he is so behind, the political consultant orders up negative research, market tests certain issues, and runs ads in order to close that gap. And the gap closes and candidate B sees in his tracking poll that the gap is closing. But because these ads—and in a sense I am responding a little bit to Senator Packwood—are unaccountable and unanswerable—and my favorite example continues to be Senator Mitch McConnell's ad against Senator Dee Huddleston in which he had bloodhounds straining at the leash searching for Senator Huddleston in the Capitol, through the woods, and finding him in Acapulco and saying that this is a junketeering, absentee Senator, by emotion, when indeed, the Senator had a 91-percent attendance record.

But you do not answer the emotive appeal of the bloodhound by saying this is distortion and I have a 91-percent attendance record. And so what you end up is responding in kind, creating an escalating arms race of attack ads. You know, they are used because the consultants say they work, but it works for only 50 percent of the consultants; 100 percent of the public loses.

You create a situation like existed in New Jersey in 1989, where candidate Florio, running for Governor, had a 60-percent negative rating, candidate Courter had a 75-percent negative rating, and the people of New Jersey were guaranteed a Governor that a filibuster-proof majority did not like. In that climate, is it any wonder that voter turnout is going down?

This is not something that is susceptible to any ad watches. It is not susceptible to exposure. And it is not susceptible not because the situation now is worse in kind, it is worse in volume. There are 1 to 2 hours of these ads every day of the week in every major media outlet in this country. And there is no way to respond.

Yes, in certain situations a Governor Roy Roemer can run and say, I will not do this, and that becomes an issue and he wins. Yes, there are times when in the replacement for the seat for Representative and former Secretary of Defense Dick Cheney, a John Vinich will do such an awful ad that the people will have a choice between the egregiously out of bounds and the awful, and yes, there are times when the first black runs for Governor or Senator or a Ku Klux Klan members runs or you are in the midst of a recession, that there will be overriding issues.

But the majority of elections are decided between bad and awful, and the people increasingly are voting with their bottoms and staying out. We are the only democracy in the world that does not regulate political advertising on television, and I think for the health of our political system we need to reverse that.

Do I have any more time, sir?

Senator INOUYE. Senator Packwood has to be leaving. But he wanted to get into a dialog with you before he left.

Mr. GANS. So, I will shut up.

Senator PACKWOOD. I can let the panel go ahead.

Senator INOUYE. Do you have any other point you would like to make?

Mr. GANS. Well, the only thing I would like to say is that this has a whole series of peripheral costs. It is the principal reason that costs of campaigns are going up, and therefore, access to the political process. Fundraising is now occupying 85 to 90 percent of the campaign budget. The rest is for candidate travel and staff, leaving nothing for grassroots activity. It is why these nameplates are not ever shown, because nobody wants an ad with an empty seat. It limits your political options here.

We had a debate in the Congress over flag burning in which the choices were a constitutional amendment or legislation against it, not whether either one of these things were necessary because everybody feared that type of an ad. We limit our choices in the political marketplace.

In other words, what I am saying is we are destroying our political system by being the only nation with unfettered ads. And the other thing that needs to be said is that the thing that the people want more than anything else in every poll is to clean up this.

[The prepared statement of Mr. Gans follows:]

PREPARED STATEMENT OF CURTIS GANS

Mr. Chairman: My name is Curtis Gans. I am vice-president and director of the Committee for the Study of the American Electorate, a nonpartisan, non-profit, tax-exempt research and public policy development organization which has, for the past 17 years been attempting to study and address the problem of low voter participation in the United States.

I want to thank the chairman and ranking minority member of this Committee for inviting me to testify and the staff on both sides for their unfailing help, patience and courtesy in both the preparation of this testimony and the allowances given for the timing of its delivery. I would also like to thank Samuel Schreiber, my loyal research associate, for his contributions to the substance of this testimony.

I think also that the whole nation owes the chairman and the ranking minority member of this committee and the chairman of this sub-committee a vote of thanks for, in each recent Congress, introducing this legislation aimed at addressing what may be the most important issue of process the nation faces—the disastrous effects on the quality of both speech and politics of unfettered political advertising on television.

It should be noted, in passing, that I have appended to my testimony a legislative formulation of this issue which, I have reason to believe, after consultation with Constitutional experts, has a better chance of surviving judicial challenge, but which, unfortunately, by its nature, is in the province of the work of another Senate committee—whose chairman, it should be noted, has co-sponsored this legislation as has the chairman of this subcommittee.

A few years ago, The Hon. Charles McC. Mathias, chairman emeritus of the Senate Rules Committee, began a speech by asking the question, "Why are campaign costs going up, while voter participation is going down?"

The answer to that questions lies at the heart of this hearing.

For the facts are not in dispute. In 1974 total spending for races for the U.S. Senate and House of Representatives was $88.2 million. In 1992 that figure was $678 million, representing a nearly 800 percent increase in campaign costs or slightly less than 400 percent in constant dollars.

During the period 1960 to 1988, voter turnout in the United 3tates dwindled by 20 percent nationally and 30 percent outside the south. More than 20 million former voters dropped out of the process. And although in the 1992 election, the nation experienced a 10 percent increase in voter turnout to the level of 55.24 percent, there is every reason to believe that the 1992 turnout increase was temporary, driven by voter fear of recession, anger at the rescinded "read my lips" pledge and mobilized, in part, by Ross Perot—none of which is a satisfactory basis for sustained turnout increase. And despite this increase, the United States, if one counts both its Presidential and mid-term elections, has the lowest rate of voter participation of any democracy in the world.

Seventeen years of study suggests that it is no coincidence that this rise in cost and denigration of participation has occurred as television has become a central part of American life and the principal means of the conduct of the American political campaigns for its principal office-holders.

As may be seen by the brief sampling of televised ads presented at this hearing, images have replaced issues; the periphery has replaced the pertinent; demagoguery has replaced dialogue; distortion has supplanted discussion.

These ads arise out of the technology of modern politics and the desire of candidates to win at any cost—even if that cost is the undermining of the American political system, the evisceration of civility and respect for both the political leader and the political enterprise as whole.

More precisely, these ads begin with the hiring of a political consultant. The central actor in the modern American political campaign is no longer the candidate but the non-responsible and increasingly irreponsible political consultant whose only aim is winning. Armed with a number of tools—negative candidate research, the tracking poll, market testing and the technological skill of encapsulating the results of these three into simple, dramatic (some would say oversimplified, distorted and perhaps dishonest) television spot advertising, the consultant goes to war against the opposition.

If candidate A is behind, he orders up a set of ads to attack his opponent on some researched and market tested vulnerable point. These ads become the themes of the campaign. The substance of the sound-bite for the nightly news and the text of the candidate's speeches. And lo and behold, candidate A closes the gap.

The problem, of course, is that candidate B also has his or her consultant, armed with the same technological devices, and once that consultant sees in his (or her) tracking polls that the opponent is gaining, a response in kind is ordered.

Why is a response in kind ordered? Because the overwhelming majority of the type of ads we have today are unanswerable. My favorite example continues to be the ads put forward by present Sen. Mitch McConnell against former Senator Walter D. Huddleston. Those ads showed bloodhounds straining at the end of a leash, looking for Sen. Huddleston, first on Capitol Hill, then through the woods, finally finding him on the beach in Acapulco.

The image was of an absentee junketeering Senator, who just happened to have a 91 percent attendance record and whose real sins were that he was earnest, a little lacking in charisma and had not spent enough time in his home state. But as Sen. Huddleston found out to his sorrow because he tried it, you cannot answer the emotive effect of the image of a bloodhound by claiming distortion and affirming your attendance record. You respond in kind.

(It should be noted that the senior Senator from Kentucky devised an adequate defense against the bloodhound ad and used it two years later in his own campaign. His ad was to show his pet bloodhound sitting by his side while he worked late at night in his Senate office. It should also be noted that the fate of our leadership and the direction of our nation should not be determined by whether one hires the

more effectively slick media advisor or can think quickly and effectively enough in visual images to respond to every dishonest attack.)

The result is and has been an escalating arms race of attack ads which pollutes the airwaves and drives the public from politics.

The consultants who use these ads say they do so because they work. And they do—they work for the 50 percent or less of the consultants in any given campaign who win. But it is the 100 percent of the public which must watch them who are the losers.

There is no defense against this biennial onslaught.

There are times when a candidate, such as Gov. Roy Roemer of Colorado, can, early in his campaign, make a public issue of such advertising, announcing he will not engage in it and then win. There are times when there is an overriding issue such as the first black to run for Governor in Virginia or Senator in North Carolina, a Ku Klux Klan leader running for governor or Senator from Louisiana or even, as in 1992, a major recession, when the issues of a campaign will transcend the advertising. And there are times, such as in the special election to fill the seat vacated by former Secretary of Defense Dick Cheney, when a candidate puts on ads that are so far beyond the pale that the public can discern between the egregiously odious and the merely awful. (But even in that race, the turnout was the lowest for a Congressional race in Wyoming's history.)

But for the vast majority of races, the choice is between bad and awful and increasingly citizens are voting with their bottoms—choosing to sit out elections rather than make choices between totally unpalatable alternatives. In 1989 in New Jersey, if the CBS-New York Times Poll is to be believed, one week before the election, candidate Florio had a 60 percent negative rating, candidate Courter had a 75 percent negative rating and the citizens of New Jersey were guaranteed a governor a filibuster-proof majority of the citizenry did not like.

The election year 1992 was supposed to be the year in which all this was to have been made better. There were debates. There were newspaper and television ad watches. There were 800 numbers which one could call to get beyond the ads to the issues.

And it was, on the Presidential level, a little better. There were no Willie Horton ads. Nearly a million people sought help from the 800 numbers. And a few minor corrections and admissions about inaccurate content were made because of the ad watches.

But even on the Presidential level, one can hardly dispute that the nature of Pat Buchanan's ads in New Hampshire and elsewhere served to cripple President Bush's campaign. President Clinton's demagogic ads on the gas tax and social security served to both undermine the candidacies of Paul Tsongas and Ross Perot and at the same time limit his own options as President. And President Bush's Time Magazine ad against President Clinton helped erode faith in the new President's character in a way which gives him today the most tenuous of holds on national leadership.

And on levels below that of President—for governor, for Senator and for Congress—the pollution of the airwaves continued unabated, and that is where the real problem lies.

An ad watch can take one ad at a time and dissect it. An 800 number which draws a million voters makes only a small dent in the nearly 200 million eligible voters, most of whom watch television.

Every day from September to November in every election year—and for longer than that if a state has a primary—there are one to two hours of these ads on every major television station in the nation. The ads in any given year are not worse than they were in any previous year. There are just more of them. If you want to know why political leadership and politics is held in such low esteem by the overwhelming majority of Americans, one need do nothing more than spend one day watching a full dose of these ads.

There is no way that voluntary efforts can contain this contagion. The United States is the only democracy in the world which does not, by either time or format, regulate political advertising on television. Unless we end that splendid isolation we will continue to be the democracy which also has the least engagement of its citizenry.

The case for such regulation rests on a number of premises:

1. Speech: You may note that nowhere is this testimony—except here—is the word negative used with respect to televised advertising. For in any race, a candidate's record, issue positions, character, sources of funds and advisors are all subject of legitimate debate. Samuel Popkin, in a book which received some prominence last year, argued that what this nation needs is more rather than less vigorous debate.

But what we are witnessing in the modern campaign is the antithesis of debate. It is warring images. It is attacks which cannot be responded to but in kind; issues ignored and unjoined; characters assassinated without the ability to provide effective response.

Indeed, it can well be argued that the type of unfettered, demagogic and irresponsible advertising we have been witnessing is undermining the very vigorous debate that is necessary to determine, each biennium, the nation's future.

Television is not, as the Supreme Court correctly observed in the *Red Lion* case, simply another medium of communication. The limitation of access to the medium and the audience both in terms of cost and the limitations of the effective broadcast spectrum and reach both in terms of the breadth of the audience and the emotive effect of visual images make it different than other mediums of communication.

Put another way, television is to all other forms of communication as nuclear weapons are to all other forms of weapons. And whereas it may be desirable to control other forms of weapons, civilization depends on controlling nuclear weapons. Similarly, it may be desirable to improve the political dialogue in many different ways, but unless we begin to control the damage that television can do—especially in its use in political campaigns—we are undermining the very debate and civility upon which the health of the polity depends.

2. Participation: In 1992, the United States had a significant increase in turnout—five percentage points or ten percent. It was the second such turnout increase since 1960. (The other occurred in 1982, also in the midst of a recession.) Which is to suggest that there was nothing in this election to indicate a durable turnout upturn and that the pattern of turnout decline which has witnessed a decrease of more than twenty percent in both our Presidential and mid-term elections is likely to continue unless we do something about the quality of our politics.

Our turnout decline has occurred despite more liberal registration laws; a population which is older, more educated and slightly less mobile (all of which should argue for higher turnout); and elections which are more competitive. Which is to say that we no longer have a one-party, one race south and that in the elections for which people vote most heavily—President, Senator and governor—every major jurisdiction, with the exception of the District of Columbia, is more competitive than it was in 1960. Which is also to suggest that the increasing disinclination of citizens to vote has nothing to do with registration, demography or competition per se, but with the quality of our political life and the motivation to participate.

Perhaps a few examples might illuminate:

In 1986, there were 24 statewide races which were decided by margins of 54-46 percent or less. Turnout was down in 16 of them. In 1988, there were eleven such contests, all of which showed a decline in voter participation.

In 1982, there was a fairly close Senate race in California between former Gov. Edmund G. Brown Jr. and present Gov. Pete Wilson in which $13 million was spent, and $7 million on media. In 1986, there was a much closer contest between Rep. Ed Zchau and Sen. Alan Cranston in which $25 million was spent, $13 million on media and turnout was the lowest in the state's history. The most expensive and one of the closest races for governor in that state occurred in 1990 between present Sen. Diane Feinstein and Gov. Pete Wilson and turnout was the lowest for a gubernatorial race in the state's history. There are similar examples of comparable races in Texas, Missouri and other states.

The lesson to be learned in each of these races is that it is not competition, but content which drives turnout higher, and increasingly, according to the consultants' design, most races are governed by the synthetic content of the consultants' design. Perhaps worse, they are also governed by the deliberate destruction of the will to vote by the consultants and their political advertising.

For one aim of such advertising is to create doubts about the opposition and weaken the impulse to vote on the part of weak partisans and undecideds. And when such ads are done by both and all sides, people respond accordingly. Finding no one to vote for, they vote against the process by staying home.

The 1986 campaign was instructive. Neither party offered an issue or program around which to conduct a national debate. The campaign was run almost exclusively on the basis of demagogic commercials. And after the election the Republican National Committee shared a poll which showed a 10 percent increase in negative attitudes toward candidates, which corresponded nicely with 10 percent decline in voter participation.

I have been looking at the issue of political participation for 17 years. And were I given only one remedy to deal with restoring some vitality to that participation, I would choose the course of bringing political advertising under some constructive regulation.

3. Cost: There is no question that the spiralling cost of campaigns has been directly attributable to the increased use of political advertising. I use the words has been advisedly, because despite the overall increase in campaign spending in 1992, the per campaign costs have decreased in the last two elections.

Which is to say that political advertising has been the driving force in making campaigns so expensive and making politics accessible only to the wealthy or those with access to broad individual or interest group wealth.

My Committee will shortly release a study of spending and media spending in three types of campaigns—the five most expensive Senatorial campaigns in each year since 1974; competitive Senatorial campaigns from 1976-1992; and competitive House races—where television is relevant—from 1976-1992. Under any of those screens, that study will show that while campaign costs have gone up substantially, the increase in the amount spent on media has far exceeded the rate of overall campaign cost increase and as such has been the driving force in increased campaign costs.

A few examples may suffice:

• In 1974, the average cost of the five most expensive Senate campaigns was $1 million or $0.67 a vote. By 1984, the average cost was $10 million or $7.74 a vote. In 1974 the average amount spent on television ads was $350,000 or $0.12 a vote. In 1984f the average spent on televised advertising was $5,000,000 or $3.54 a vote. In these most expensive campaigns, overall costs increased ten-fold (a little less than five fold in constant dollars), while media costs increased nearly thirty-fold (or 15-fold in constant dollars.)

• In 1976, in competitive House races where television was relevant, the average race spent $1.28 per vote overall, $0.38 per vote on television. In 1992, overall spending was $5.06 per vote and $2.30 for media. Which means that overall costs increased by a little less than four-fold, while media spending increased by a little less than six-fold.

In each case, media spending increased at a rate higher than that of overall spending.

4. Allocation: While per campaign overall spending has gone down in the past couple of election cycles, the percentage of the campaign budget spent on television has gone up.

In the five most expensive Senatorial campaigns in 1974, the percentage of the campaign budget spent on media was 17 percent. In 1978, it was still hovering in the mid-30's. In 1992, the percentage spent on media was 57.93 percent.

In competitive Senatorial campaigns in 1976, the percentage of the campaign budget spent on television was 44 percent. In 1992, it was 58 percent.

In competitive House races, in 1976 less than 30 percent was spent on television. By 1992 that figure reached nearly 46 percent.

If one adds the roughly 30 percent of the average campaign budget which goes to fund raising, you find that 85-90 percent of the average competitive Senatorial campaign budget goes to television and more than 75 percent of the average House competitive campaign budget goes to television. The remaining dollars tend to go to candidate travel and staff.

Which leaves nothing for grass roots activities which actually involve citizens. (Which is, in turn, one reason why this body might hesitate before it eliminates soft money from political campaigns.)

For if the trend continues, the little remaining grass roots of American politics will wither and die.

5. Leadership and Public Policy: One of the major negative effects of the actual and perceived potency of demagogic political ads is what it has done to both discussions of public policy and the conduct of political leaders.

Because leaders fear such ads will be used against them, they tend to adopt a posture of insuring that they are safe before they are sorry.

Thus, while it used to be the case that individual leaders tried to determine what was in the best interests of the nation and their constituents and then poll the public to find out how to sell their views, it is now more often the case that many political leaders take polls to be sure they are in step with the public and before they advocate.

Similarly, there is a general tendency to avoid public policy discussion of those issues which might be demagogically used against the office-holder. It is precisely for fear of these ads that the debate over flag burning was between a legislative or Constitutional Amendment prohibition on the practice, rather than questioning whether any redress beyond moral outrage was necessary at all. And it is for fear of those ads, that despite a 4 trillion dollar national debt which is rising at $300 billion a year, the taxing of almost all entitlements is treated as a taboo topic de-

spite the almost universal realization that such revenue is necessary if the debt and deficit is to be reduced.

6. Political Parties: By handing our politics over to non-responsible political consultants, we have emasculated our political parties.

Those parties were once the way we trained and devloped leadership, sifted the wheat from the chaff in public policy advocacy, imposed a degree of direction and discipline to elected office-holders. At one time, because of both the discipline and advocacy of the political party—and despite often fractious debate and disparate viewpoints—if one elected a leader from either party, one knew what one was getting in public policy and party program.

Now, the parties are hollow shells, servicing candidates with money and hucksters, standing for nothing except what the poll of the moment suggests where the candidate and party should be positioned.

In recent weeks, when the economic program of the current President seemed in trouble, he did not consult with his economic advisors, but rather with his image makers—the James Carvilles, Paul Begalas and Mandy Grunwalds of the world. Even in governance, image has replaced substance.

7. Political Choice: Politics by political commercial has effectively reduced choice in the political marketplace in two ways—by raising costs in such a way as to limit access to the political marketplace and by the invasion into every aspect of an individual's life—with a microscope and the magnifying glass of television—making it likely that only the totally pure in heart and deed will be willing to offer themselves up to that type of scrutiny.

Which, of course, leaves the majority of flawed (read normal) Americans from seeking elective public service in order to preserve their own dignity. This, in turn, leaves our political system poorer. In the past year, the hiring of an illegal alien or overdrawing one's bank account were the type of issue which might disqualify otherwise capable persons for public service. Because demagogic political advertising paints with a broad brush, it is not possible to discuss the nuances of particular cases and too often the candidate or office-holders chooses not to bother, resigning or choosing not to run.

The list could go on: In 1990, in the midst of a recession, on the eve of a Persian Gulf War, with the threat of substantially higher fuel prices facing Americans and with the continued problems of health care, crime, drugs and homelessness facing most Americans, the California Senate race was conducted on the issue of term limits; the race for Senate in Idaho and governor in Pennsylvania was conducted on the issue of attendance records. The discussion that the American people want to have of the important issues facing them is precluded by the politics of political advertising and the desire to avoid precisely the serious discussion the public seeks.

Because the advertising dominates the dialogue and the consultants dominate the candidates, the idea that journalism can provide the public with a people's agenda and the candidate's response to that agenda is but wishful thinking. The consultants control the game, cocoon their candidates and the public be damned.

We will not have a healthy political process until we bring the way we conduct our campaigns under control. And that begins with the constructive regulation of political spot advertising.

I have three things to say in conclusion.

The first is that the people want the way we conduct our campaigns to change. In almost every poll on either what's wrong with our politics or what's wrong with the conduct and finance of American political campaigns, the issue of televised political mudslinging is at the top of the public's concerns. In a recently publicized poll on campaign finance, Celinda Lake found that the number one concern of the electorate was the demagogic campaign.

In the last election, a greater percentage of the American electorate watched the debates. More Americans watched Ross Perot's infomercials than watched most prime-time broadcasting. People are simply hungering for substance.

It would be a shame and a pity if our reform efforts provided candidates with vouchers to glut the airwaves with scurrilous ads before we put some restrictions on the nature of those ads.

Secondly, it would be well to address the two principal objections to such restrictions—the view of some (especially in the Republican Party) that it will rob them of a weapon to challenge incumbents and the view of others that such address may violate the letter of the First Amendment.

I have opposed most proposals for spending limits on political campaigns as an unwarranted restriction of competition and unnecessary protection of incumbents. For unless those limits are indeed very high, they will enhance the intrinsic powers of incumbency—name recognition, staff, constituent service, the frank and media access and make elections less competitive.

But while I believe there is a slight pro-incumbent bias to proposed remedies to the political advertising problem—it is minute portions of an incumbent's record that are easier to document and demagogue—I also believe that in the absence of issues of moral turpitude, an overriding major issue, a sea change in public attitudes or non-performance in office, incumbents are entitled to the benefit of the doubt. But when any of those conditions prevail, it is not necessary to have the type of advertising we now have to make changes. In 1966 and 1968, citizens didn't need hucksters to tell them about the war in Vietnam. In 1974, it was not the ad men which made Watergate an important and politically life-threatening issue. In 1982 and 1992, a recession took its toll without the benefit of the consultant clergy. Real issues will out and the phony ones ought to be discouraged.

In the same vein, I do not believe—and have research to back that belief up—that the framers of the First Amendment believed in free speech rights for unaccountable speech, talking cows, anonymous voice overs, musical scene setting and the like. I don't believe that the present interpreters of the First Amendment, the eight men and one woman who will ultimately decide this issue, will find returning the political dialogue to speech and accountability inimical to the First Amendment.

And I know that the political system will be much the better for such regulation.

The last point is simply that technology is one of the most important issues that public policymakers have to face. New technology may be value neutral but its effects can be positive or negative on the society. It is perhaps one of the highest callings of public policymakers to separate out those technologies which aid the public and those which harm it, encourage the former and regulate the latter. There is no question in my mind that political advertising falls into the latter category.

Thank you again for letting me testify and I stand ready to assist you in your efforts to bring this problem to a constructive public policy resolution.

[S. 577, 100th Congress, 1st Session, may be found in the committee's files.]

Senator PACKWOOD. Let me ask you a question here. Are you arguing for S. 334 which requires a candidate to appear on, or are you arguing about the cost of ads? I am not quite sure what you are driving at?

Mr. GANS. My favorite piece of legislation is a version of S. 334 that has been in previous Congresses, introduced by Senators Inouye and Rudman, and supported by Senator Ford.

Senator PACKWOOD. Where the person has to appear on the ad?

Mr. GANS. For spot advertising—for me it is 2 minutes in length or less—the purchaser or an ad or an identified spokesman must speak to the camera for the duration of the ad.

Senator PACKWOOD. All right. Now, let me ask you a question then—if I might, Mr. Chairman, as long as we are going to go on with this.

I just sold my home in Oregon, so I no longer own one. And I am going to get hit in the next campaign about not owning a home. First, is that a legitimate issue for somebody to raise?

Mr. GANS. Yes, I think it is a perfectly legitimate issue so long as you raise in speech and accountability.

Senator PACKWOOD. Well, then what is wrong with raising it the way this ad was on Bob Byrd, which is a more effective way of my opponent getting it home than his talking head appearing on television?

Mr. GANS. But that you cannot answer because it reaches you emotionally. Where I disagree with you, Senator, is I believe that there is a quantum difference between the impact of television and any other medium.

Senator PACKWOOD. Well, I grant you that. But you have no objection to the opponent's talking head appearing on television.

Mr. GANS. I would like for spot advertising, to sell anybody who wants to buy time, whatever time they want to buy, to say what-

ever they want to, so long as somebody identified does the saying for spot advertising.

Senator PACKWOOD. All right. One of the big issues we have got going right now is NAFTA, the North American Free Trade Agreement, and it is a hot issue. And it separated my opponent and myself in my last campaign. I supported it; he was opposed to it.

Why should he not—his ad was here is a factory gate closing—clank—this is Caterpillar Tractor. They have moved to Mexico—this is what my opponent wants. Why should he not be allowed to use the most effective way of getting out his position in opposition to the North American Free Trade Agreement?

Mr. GANS. Because if you do not have it as speech, it becomes an undebatable proposition and you get attacked on something else. It is not answerable because this reaches the emotions. You cannot answer the image of Fidel Castro. You cannot answer the bloodhound. You cannot answer what 2 hours of this stuff is doing to our political system on every station every day.

Senator PACKWOOD. Thank you, Mr. Chairman.

Senator INOUYE. Thank you.

Mr. Guggenheim.

STATEMENT OF CHARLES E. GUGGENHEIM, PRESIDENT, GUGGENHEIM PRODUCTIONS, INC.

Mr. GUGGENHEIM. I testified at this committee 8 years ago and we were talking about the same thing then. I testified a few years ago, and we were talking about the same thing then. I would like to complete my career with a bill passed which will somehow address the kinds of things that have disturbed me all these years, assuming that what disturbs me is valid.

I made my first political commercial almost 40 years ago. I have been in over 100 campaigns. So, you know where I come from, I have worked in the campaigns of Senator Hollings and Senator Danforth, and once in a while Mr. Packwood has called on me. So, I think I qualify as being ecumenical.

However, I do not make political commercials any more, and I have not done so for the past 10 years, because it became very difficult for me to live with myself. I was not very happy doing what I was doing. Of course, that is my problem, that is not yours. But I was trying to think that if I felt that way, what was it doing to other people in this country?

I agree to some extent—in fact, I agree to the full extent that the system is not working well, and that it is leading to a cynicism on the part of the electorate.

I must agree with Senator Packwood that some of the commercials we saw here today are very amusing. I do not find them uneducational. So, what disturbs me? What disturbs me is that we have established a process—an arbitrary process—that the commercial networks and the commercial stations have accepted—that has forced the system of political dialog into transmitting ideas and information to the electorate in the worst possible way.

I am sure my friend from the Civil Liberties Union is more right than my friend on the left. I do not believe that we should legislate how political commercials should be made. Senator Danforth may think that I have turned a little bit on this, and I have, because

I was the one who originally suggested to him that we have candidates representing themselves in negative ads. But I believe that puts the television stations in a position of being a judge of what is negative and what is not negative, what is a negative comment and what is not a negative comment.

I think that is an unfair position to put the stations in. They do not want to be that judge. They want to go on with their business of broadcasting.

So, I think what we should not be sidetracked by this issue. The real problem is that we have inherited, through the broadcasters an arbitrary system. It is not a system created by the Constitution. It is not a system created by law. It is a set of rules established by the broadcasting industry—a reasonable one in their mind—that says that the political dialog will be carried on in 30 seconds.

The fact that an industry can establish an arbitrary system of campaigning means to me that we could just as easily have a system that would encourage a fair, more intelligent, and more comprehensive way of carrying on a political dialog.

Why do we accept the present system—this 30-second system—any more than an aboriginal tribe accepts the fact of footbinding or stretching of the neck with bracelets as a way of demonstrating femininity?

Face it. We have accepted it. And unfortunately I do not think there is a movement out there to change things. I really do not. I am ready to accept in part that people are becoming cynical and are voting less. I am ready to accept that the 30-second ad does terrible things and turns people off. I am ready to accept that.

But more importantly, we must go where only we can go in our democratic system, without violating the first amendment.

Let candidates make fools of themselves. I have been in more elections where people have paid to defeat themselves than to win. [Laughter.]

There is no great advantage in being stupid, dirty, and negative. That is not the point. The point is that we must reform a system that arbitrarily encourages this kind of behavior, not to tell a candidate what he can say or how he can say it. Let him do that if he wishes. Let him use hound dogs if he wishes. Let him use his wife if he wishes. I do not care.

The point is we must, at the end of that announcement, make it very clear that the person who put it on is responsible for the goodness or the foolishness. That is what it is all about.

And when Senator Packwood said, you know, newspapers in this country were as dirty 100 years ago as television is today, he is right. I can go back into political campaigns, that were just as dirty and just as unfair and just as negative before television even came on the scene. Absolutely. The only difference is that we have imposed through an industry an arbitrary method of encouraging this unfairness. That fact is where we ought to put our mind. And accountability is the only way I think we can do that.

I submitted some language to this committee 4 or 5 years ago. Obviously staff members have gotten to it, and I think they have changed it for the worse. I do not think we want to go into it now, but the bills we have before us can be strengthened without in any way abrogating our responsibility to the first amendment.

Specifically, accountability means an announcement at the end of every political spot, 5 seconds, no less, in which the picture of the candidate appears who is responsible for the ad stating that the ad has been paid for and approved by Senator, or Congressman, or Governor, or whatever else—paid for and approved by this person who is a candidate for a certain office.

If you took the ads we were shown here today, and arbitrarily placed this kind of disclaimer at the end, there would not be tittering at the end of these ads. There would not be the cynicism that we witnessed. A candidate would think twice before he decided to waste our time with these kinds of messages because he would be personally responsible for this foolishness. He would be responsible for this unfairness and he would face the possibility of facing the consequences.

Now, what the system does is allow us to have surrogates to avoid that. These spots are not attached to the candidate who put them on. They are spots produced by somebody else, a third party in the wings, who the candidate hired to do the dirty work. And that is why a candidate gets away free from being responsible for the negative ads.

Now, if my suggestion for accountability in any way touched the first amendment, I hope I would be the first to back off, but I do not believe it does. And I emphasize that presently we have an arbitrary system which we can change arbitrarily for the good.

Senator INOUYE. Thank you very much, Mr. Guggenheim. Mr. Peck.

STATEMENT OF ROBERT S. PECK, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. PECK. Thank you, Senator. I ask the committee's permission to revise my written remarks which were done rather hurriedly to meet the deadline of the committee.

My friend, Curt Gans, said we are the only country that does not regulate political advertising. One of the reasons for that is because we are the only country that has the broad protections of the first amendment as we have come to know them today.

The first amendment's guarantee of freedom of speech does more than protect our freedom to say what we think. It also protects us in the right to do speak in the way that we think is most effective. That includes the use of surrogates. That includes appeals to emotion. I cannot imagine separating politics from emotion, as was suggested.

It includes the fact that we cannot require that people say things a certain way. If they feel this way, that they hate America, we even protect their right to burn the flag in order to get that sentiment across. Whether we think that is reprehensible or not, the Constitution protects it.

I do not see that it is going to make a difference if we have someone sitting in front a screen and saying, this is a whale and this is Bobby Byrd's house. They are still going to be able to get that notion, and the fact is that people are not fooled about who is behind the ads.

Instead, we should rely on our rights of political speech to say, "look what my opponent is doing." "Look, is this a serious can-

didate for the U.S. Senate?" "Is this the way we want to be represented, by someone who resorts to tactics like this, whether true or not."

The fact is that what the first amendment protects has absolutely urgent application to our political campaigns. It includes wide-open, uninhibited, and robust debate that may well include caustic attacks on our opponents. We cannot constrain that debate by saying that that which is disturbing or a majority of the people thinks is unseemly is inappropriate. It remains a bedrock principle that we have to let people speak their minds, and use our own free speech rights to identify the problems.

Often we cite some of the very recent Supreme Court cases to support these ideas, but today I would like to go back to 1940, *Cantwell* v. *Connecticut.* In that decision the Supreme Court said, "To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to falsehood. But the people of this Nation have ordained in the light of that history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

We have to trust our citizens to make the decisions and not try and say debate will take place within these constraints and then you can make your decisions. Citizens are wise enough to say that when politicians engage in what is unseemly behavior, they will make the decisions on whether or not that rises to a level that they can no longer support that candidate.

The fact remains that we have the right to name our opponents in our ads, and any burden on that right then burdens all our rights of free speech. As soon as we say, as S. 334 does, that the mention, indirect or direct, of our opponent will give other people certain rights or impose additional burdens on how we speak those words, we are burdening those free speech rights.

And, indeed, if the broadcaster chooses not to enforce this provision we suddenly are giving our opponent free time on television. This is a penalty against the exercise of our own first amendment right. The Supreme Court has said clearly, time and time again, we cannot penalize people for using their rights.

That is why I think that S. 334 is not only unwise but unconstitutional. The last thing we want is a series of bureaucracies evaluating whether people are speaking the right way about our politics.

[The prepared statement of Mr. Peck follows:]

PREPARED STATEMENT OF ROBERT S. PECK

The first amendment's guarantee of freedom of speech does more than protect our freedom to say what we think. Among its other protections, it secures the "right [of people] not only to advocate their cause but also to select what they believe to be the most effective means for doing so." *Meyer* v. *Grant,* 486 U.S. 414, 424 (1988). Nowhere is that guarantee given greater protection than in electoral politics because the "First amendment has its fullest and most urgent application precisely to the conduct of campaigns for public office." *Monitor Patriot Co.* v. *Roy,* 401 U.S. 265, 271–72 (1971).

This, of course, only makes sense, since "[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." *Buckley* v. *Valeo,* 424 U.S. 1, 14 (1975). In fact, "there is practically universal agreement that a major purpose of that amendment was to protect the free discussions of governmental affairs, * * * of

course includ[ing] discussions of candidates * * *" *Mills* v. *Alabama,* 384 U.S. 214, 218 (1966). The Court has further recognized that this right necessarily represents "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times* v. *Sullivan,* 376 U.S. 254, 270 (1964). These protections include the right to use your opponent's name. *Friends of Phil Gramm* v. *Americans for Phil Gramm,* 587 F. Supp. 769, 774 (E.D. Va. 1984).

It is therefore clear that any attempt to restrict what or how a candidate promotes his or her candidacy runs smack into the prohibitions of the first amendment. The trigger for the rights contained in this bill violate those principles by telling a candidate how he should refer to such a legally qualified candidate, namely in person. The rights of access were intended to prevent anyone from interfering with how a candidate delivers his or her message. S. 334 moves in the opposite direction and does so unconstitutionally.

Even if this can be justified as a time, place, or manner restriction—which I doubt—it is content-based and therefore unconstitutional. Time, place, and manner restrictions are only valid "provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Clark* v. *Community for Creative Non-Violence,* 468 U.S. 288, 293 (1984). See also, *City Council of Los Angeles* v. *Taxpayers of Vincent,* 466 U.S. 789, 804–05 (1984) and *U.S.* v. *O'Brien,* 391 U.S. 367, 377 (1968).

S. 334 contravenes these requirements because it is triggered by the content of the message: reference, direct or indirect, to an opponent. Some of the most successful political advertisements did not take this approach. Also, by appropriating time for an opponent based on either the candidate's advertisement or that of an independent operator, the bill penalizes people for the exercise of their constitutional rights.

S. 334 also violates the first and fifth amendments rights of broadcasters by allowing candidates to appropriate their time for their opponents by such direct or indirect references.

Senator INOUYE. Thank you very much, Mr. Peck. Mr. Peck, is our democracy or our Constitution strengthened or enhanced by a larger voter turnout?

Mr. PECK. It is generally strengthened by that, but not at the cost of constraining people's right to speak. Speech ought to be the way that we get voters interested. Obviously, if people are talking about issues or pointing out the problems of electing people to office who may engage in ads that cause us to laugh and, therefore, are not taking the issues that our Government must deal with seriously, the danger will certainly become apparent and cause a consciousness among the voters that they will act upon. But as long as they do not think that anything is at stake they probably will not vote.

Senator INOUYE. If a scientific study showed that these 30-second slash-and-burn ads impact upon the voter turnout to the point where very few would respond, would that be of concern to you?

Mr. PECK. It would be of concern, but it would not change the constitutional prescription here. The fact is that the Constitution still requires us to find some other way, other than constraining speech rights, to deal with that issue. It may be that the opponents of those who use the 30-second slash-and-burn ads start pointing that out, speaking about it, because speech, counterspeech, is the best antidote to speech that we do not like.

Senator INOUYE. You would be against any sort of condition or restriction?

Mr. PECK. Yes. I think our political debate has to be unconstrained.

Senator INOUYE. Even if the statements are outright lies?

Mr. PECK. The Supreme Court has addressed this a number of times and said that basically you cannot have a political truth department that checks on the veracity of the ads. And, indeed, those States that have tried to have a political truth provision in their law have had them struck down.

Senator INOUYE. What if these ads, sponsored or paid for by some group, just identified independent voters of Hawaii, would that suffice, and might be made up of four people?

Mr. PECK. It certainly would suffice. You know, the media did a very good job, I think, in this past Presidential election of checking out the ads of the Presidential candidates. That was the use of our first amendment, to check out the truth or falsity of many of the ads, and people made their own decisions.

Also, of course, we have extensive disclosure laws that people can go to, not only the press but individual citizens, to find out who really is behind these ads. That is the way it should work.

Senator INOUYE. Well, if that ad by the independent organization called Independent Voters of Hawaii appeared the night before the election and thereby giving the candidate no opportunity to respond and is a bald-faced lie, what recourse will the loser have?

Mr. PECK. Well, that is a good question and it is a difficult one to answer.

Senator INOUYE. Is that a price we have to pay for democracy?

Mr. PECK. I believe it is. But, of course, you also realize that an ad at the last minute is not going to necessarily reach as many voters as one that has had time to sink into people's consciousness.

Senator INOUYE. You will have difficulty convincing us of that. Senator Packwood.

Senator PACKWOOD. Mr. Gans, you seem to be real down on appealing to emotion. Am I correct?

Mr. GANS. No, all I want is answerability and accountability.

Senator PACKWOOD. What does that mean?

Mr. GANS. You cannot argue with a whale and a house, you cannot argue with the bloodhounds. What you end up doing——

Senator PACKWOOD. Wait. Sure you can. Let us come back to the whale and the house, and then I want to get to one of Charles' ad, the John Gilligan one back in 1966. And actually before I ever knew Charles I saw the ad I thought I wanted to see who made this ad. It was sensational.

If the issue of owning a house or not owning a house is a legitimate issue and there are people who will make it, why not put that across in the most effective way? That may be an emotional way. Is there anything wrong with that?

Mr. GANS. Because it is not answerable—I mean, the Huddleston example is perfectly good example, which is he was a Senator with a 91-percent attendance record. He tried to put on ads——

Senator PACKWOOD. Wait. Is your standard going to be then if the ad cannot be answered it is wrong?

Mr. GANS. No. My standard is going to be that there ought to be a uniform format, a set of groundrules that everybody can play by, that returns things for those ads that are, indeed, what Mr. Guggenheim suggested, captivate ads that grab you in the middle of the program. You cannot get away from them.

Those ads, if you want to do something produced in a longer period of time you can have your devices, but that does not grab people in the same way as a 30-second spot.

Senator PACKWOOD. All right. Here is Charles' add. 1966, John Gilligan. First it opened, as I recall, he is walking across the bridge with the footsteps going clack, clack, clack, clack, and the river is underneath, and you are going to clean up the river. Then it is a long documentary. You go through his entire life. I do not know how long it was. Maybe one-half an hour.

But you show him in that wonderful picture at the St. Francis of Our Virgin Mary of Our Lord High School in his little skinny football helmet, clearly a Catholic high school. And then it flashes to—and it went off and shows him playing high school football or something like that. And he went off to Notre Dame in the era of Angelo Bertelli, and it shows Bertelli back and throwing a pass to the end and catching it giving you the impression that Gilligan is the end.

He never played football at Notre Dame, but the impression that you are given, boy, here is a great Catholic kid, Notre Dame football. That is hard for the opponent to respond to, and that is an appeal to emotion.

Mr. GANS. I agree, but it does not have the same impact.

Senator PACKWOOD. It is on television.

Mr. GANS. I understand. It does not have the same impact as the 30-second captive ad. You know, it indeed can be answered in longer—in the same length period—because it does not make people captive. I mean, as you probably know Senator Gilligan is now at Notre Dame. I do not know if he is an end. [Laughter.]

Can I just say one thing? There have been some groundrules for these hearings designed, I think, with reasonable care so that no incumbent office holder is insulted by what we put on the television. But at some point it would be useful to show what constitutes the give and take in the campaigns through advertising.

It would be wonderful to show what happened in New York this year between the attorney general and the present Senator because that tells you exactly what the problem is. That, for whatever the principle, and mostly I share it with Mr. Peck, articulates that is not the choice that people face. They face garbage in and garbage in.

The second thing I would like at some point for the opportunity is for you to look, and I have got several tapes of this, of one day's advertising on one channel and see what the public gets.

Senator PACKWOOD. Let me ask you a last question, and then I apologize for having to run. In the last campaign it was almost impossible to explain away—some candidates won. But it was almost impossible if you were a House Member to explain away check bouncing. It was not a winning issue no matter what. It did not matter if somebody hit you personally on radio, television, or the newspaper you were on the defensive.

Now, maybe you won the election anyway, but a lot of people suffered because of check bouncing. Well, it was not really check bouncing. This was not really a bank. I mean, that is the explanation you try to give.

Is there anything wrong with a candidate's opponent, somebody running against a Congressman who bounced checks hitting him on the bounced checks.

Mr. GANS. I think not.

Senator PACKWOOD. It is an emotional issue.

Mr. GANS. I do not care.

Senator PACKWOOD. Is there anything wrong with hitting with a 30-second ad on bounced checks?

Mr. GANS. If somebody is willing to talk about it for a 30-second ad. I mean, not to show a visual of a bounced check, the jail that this guy should be in, the sinister music. I mean, those are the things that change the nature of the dialog.

I have been fond of saying and I will continue to say that television is to all the other campaign tools what nuclear weapons are to conventional weapons. And I think for the health of humanity we need to control nuclear weapons. And for the health of our politics we need to control television advertising where it makes a captive audience.

Senator INOUYE. Senator Danforth.

Senator DANFORTH. Mr. Peck, right now the law requires that in a television commercial there has to be a little tag line at the end of the commercial which says paid for by Citizens for Danforth Committee, or whatever, and then with a very small little picture of the candidate. Now, is it your view that that line, that tag line and that picture, are unconstitutional?

Mr. PECK. It seems that that is a narrowly tailored attempt to assure disclosure. I think that whatever is necessary to assure disclosure might be constitutional. Whether it requires both the picture and the tag line may be up to question.

Senator DANFORTH. All right. But the idea that the ad requires disclosure is, in your view, not unconstitutional.

Mr. PECK. That is right.

Senator DANFORTH. All right.

Now then let me ask Mr. Guggenheim, in the 40 years less 10—let us see, that would mean that you got fed up just about——

Mr. GUGGENHEIM. Right after your election.

Senator DANFORTH [continuing]. During 1982. [Laughter.]

I understand. Have you, in your 40 years minus 10 of making television commercials, met with anything that could fairly be described as anything close to the Danforth for Senate Committee, or the Pressler for Senate Committee, or the Blokes for Governor Committee? Is there a formal committee that has been constituted with a chairperson and a Secretary and a Treasurer and so on that you meet with that looks at these commercials and approves the commercials?

Mr. GUGGENHEIM. No.

Senator DANFORTH. Who do you, in fact, get clearance from in the running of commercials? Who, as a practical matter, does a television producer talk to to get the signoff for the commercial?

Mr. GUGGENHEIM. Usually the candidate. But one of the more effective campaigns I did was for a man I admire the most in this Senate, Senator Hart of Michigan. And he did not tell me until 8 years later that he saw the commercials.

Senator DANFORTH. But normally, as a general matter, almost always if not always, you meet with the candidate himself or herself and the candidate says that is good, that is not good, the candidate gives the approval.

Mr. GUGGENHEIM. Yes, that is right.

Senator DANFORTH. Now, does something that would be called the Danforth for Senate Committee, if the commercial says paid for that, does that give useful information in your opinion?

Mr. GUGGENHEIM. No.

Senator DANFORTH. And does the tiny little picture flashed in a matter of a second or two, whatever, at the bottom of the screen, does that give useful information to the public?

Mr. GUGGENHEIM. No.

Senator DANFORTH. So that whatever information is given, is that, in your opinion, just as a matter of fact disclosure of who is really responsible?

Mr. GUGGENHEIM. It is no disclosure.

Senator DANFORTH. It is a fake, is it not?

Mr. GUGGENHEIM. It is a fake.

Senator DANFORTH. It is a misleading disclosure.

Mr. GUGGENHEIM. Absolutely.

Senator DANFORTH. All right.

Let me just ask you one other question. Mr. Peck said that the politicians should be making decisions about how the commercials appear on the air. If a politician wanted to do what Senator Dorgan suggested and have a campaign that consisted of 5-minute commercials, the candidate said, "Look, I do not want a 30-second commercial. I have made my decision on my campaign and I want to be on television, but I want to communicate a real message to my constituents. I do not want a 30-second commercial. I want commercials that are 5 minutes in length."

Does the candidate have the power to order up that kind of a commercial?

Mr. GUGGENHEIM. No.

Senator DANFORTH. Does the candidate have the power to order up a 3-minute commercial?

Mr. GUGGENHEIM. No.

Senator DANFORTH. What, as a practical matter, can a candidate buy when buying television time?

Mr. GUGGENHEIM. He is totally—it is totally at the discretion of the television station.

Senator DANFORTH. And the candidate, if he wants a longer period of time, that is too bad, he cannot get it, right.

Mr. GUGGENHEIM. He may be able to get it.

Senator DANFORTH. But generally not.

Mr. GUGGENHEIM. Generally not.

Senator DANFORTH. Can he generally get 2 minutes?

Mr. GUGGENHEIM. Well, he can get 2 minutes, yes. But it is such a small part of the audience he is allowed to reach, that he is permitted to reach. Some stations give 2 minutes, some stations give 5, some stations do not give 5, some stations do not give 2.

Senator DANFORTH. But all give 30 seconds.

Mr. GUGGENHEIM. Oh, yes, you can get 30's.

Senator DANFORTH. So, the candidate is at the mercy of the television station; right?

Mr. GUGGENHEIM. Always has been.

Senator DANFORTH. At the mercy of the television station. So, the idea that the politician is making a decision to buy a length of time is totally untrue.

Mr. GUGGENHEIM. Specious, that is right.

Senator DANFORTH. And the idea that there is any public disclosure in the existing tag line is totally untrue.

Mr. GUGGENHEIM. Also.

Senator DANFORTH. It is a lie; correct?

Mr. GUGGENHEIM. Correct.

Senator DANFORTH. That is being communicated.

Mr. GUGGENHEIM. Correct.

Senator DANFORTH. Thank you.

Mr. GUGGENHEIM. Can I add just one thing?

Senator DANFORTH. Yes.

Mr. GUGGENHEIM. It has been said in defense of the first amendment that we should not put constraints on free speech. We have constraints. You have mentioned them just now. Those constraints are arbitrary constraints. Why is the Civil Liberties Union not arguing against these constraints? He is arguing about constraints that we are suggesting, but not ones that are already in place.

Mr. PECK. If I may answer——

Senator DANFORTH. The tag line that Mr. Peck has said is all right because it is a disclosure would seem to me to be no more burdensome than the kind of statement that you have suggested where the candidate appears and says I have paid for and approved this.

Why do you object to a truthful statement, Mr. Peck, the candidate has paid for and approved the commercial, when you do not object to a false statement that is now appearing on the screen, that it is paid for by a totally bogus committee?

Mr. PECK. Well, it is my understanding that the appropriations for campaigns operate out of committees that are regulated by the FEC. And so it is not false statement to say that it is paid for by the committee which is raising the money, because it is not paid for personally out of the candidate's pocket.

Moreover, when we are talking about free speech under the first amendment, we are talking about Government constraining the speech. That is what the protection is against, and not against private individuals. Imagine if we wanted to appropriate one-half a newspaper because that is the preferred way I would like to reach the public.

Senator DANFORTH. I understand that distinction. But I just want you to please tell me if you are making the constitutional argument in favor of this disclosure that is a falsehood.

Mr. PECK. Well, again, first of all I do not think it is a falsehood, because it is accurate.

Senator DANFORTH. All right, what useful——

Mr. PECK. But second of all, I do not think any member of the public is ever fooled that when it is the Danforth for Senate Committee, that you are not the person behind that committee.

Senator DANFORTH. Why is it required by law that this statement that at best is useless and at worst is a falsehood appear on the screen? By law we require that that misleading statement appear on the screen.

Mr. PECK. No, it is not useless, it is not the Hawaiians—Independent Voters of Hawaii who are appearing on the screen. They know this is your campaign, and not some independent campaign that has tried to be for or against you.

Senator DANFORTH. Mr. Peck, with all due respect, this present form of the tag line is allowing me, the candidate—I am not a candidate and never will be. But it allows the hypothetical candidate to hide behind a bogus committee. And instead of taking personal responsibility for what is on the screen, as Mr. Gans suggests, the candidate is hiding behind a mask which in reality does not exist.

Mr. PECK. It is not a mask that I think fools the public at all.

Senator DANFORTH. All right.

Senator INOUYE. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Mr. Guggenheim, I had a question about your proposal where the opponent would—in other words, really what you are saying is do not try and define the content. But if it is a negative ad—and I guess that would have to be defined, what is a negative ad. But the candidate who sponsored that ad would have to have his picture or something on that. And you would, I guess, think that in that kind of a scenario the voters would be able to make a decision and either penalize him or support him, depending on the content of the ad. Is that basically it?

Mr. GUGGENHEIM. That is basically it.

Senator EXON. What about that kind of an ad that was sponsored by an independent person or a third party or something? How would you cover that? What about that?

Mr. GUGGENHEIM. I think it is more difficult, but I think—definitely, I think that individual has to become responsible. A person has to become responsible, not a group, not an anonymous organization.

Senator EXON. No, but you have seen in campaigns, I am sure, an individual or third parties or third-party committees that legitimately have not checked with and legitimately can say they are not working on behalf of another candidate. They go about very negative types of advertising that you must be thoroughly familiar with with your years in the business. How do you protect, or can you not protect a candidate from that kind of an attack?

Mr. GUGGENHEIM. Well, I think—I agree. I think there are two parts to your question. Who do you put on the screen as responsible for that ad.

Senator EXON. Right.

Mr. GUGGENHEIM. And I have thought about that a lot, and it is much more difficult, obviously, because it is an organization rather than a person. But there usually is behind those ads a person who is a legitimate leader of that organization. And this ad has been paid for and approved by this organization, Mr. so-and-so Jones, president.

An individual has to be responsible for this ad. And if he is a leader—if he is a legitimate leader of that organization or president

of that organization or chairman of that organization, he too has to be responsible at the end of the ad. That is the only way we should handle it.

Senator EXON. The only thing I would say, that it seems to me like that is shot full of holes, because I really believe the thrust of your suggestion that somewhat intrigues me is—I think you said that if some people want to make fools of themselves, let them do that.

Mr. GUGGENHEIM. Yes.

Senator EXON. But when they make fools of themselves, they are also advertising a picture of themselves and their name as a part of the ad, which would supposedly provide some kind of a penalty for you doing that. But if you had a third party and even if you put their name up there, that would not make any difference to them. It would not be very effective, would it?

Mr. GUGGENHEIM. I think it would, and I think, you know, it is not as clear to me as the candidate against candidate. Senator Percy was, I think, wronged in the campaign in which a gentleman in California had an organization and he was out to defeat Senator Percy. And he put up the money in an organization—over $1 million, into the Illinois campaign. If that man's picture had been at the end of those ads saying that he was head of this organization, those ads would never have appeared. In my mind, they would not have.

I would like to address—since you brought that up, I think this third-party thing is a very interesting one, and I think it is one that should be looked at carefully in S. 329. I am sorry—S. 334. Because a very interesting thing can happen.

Almost the most dangerous thing that could happen to you as a candidate is for a third party that you have nothing to do with putting ads on in your behalf that are embarrassing to you. If that happens, under this provision of S. 334 the opposition gets free time so you are damned twice. You are damned once by someone putting an ad on in your behalf which is embarrassing to you. Then your opponent gets free time in which he can say anything he wants, and then the next thing is the television station counts that as part of your time and gives you less time when you want to buy it. So, you are damned three times under this bill.

Senator EXON. It gets pretty complicated; does it not?

Mr. GUGGENHEIM. It does.

Senator EXON. Now let me ask you this question, Mr. Peck. You said in an answer to a question to you, that there should be no kind of restrictions—I mean that is your position. Does that also go for—since we are talking about public media and broadcasting, does that also hold true for the position of the ACLU and your fierce defense of that constitutional provision that is cited over and over and over again for everything? Do you also believe that there should be no restrictions of any kind—of any kind on nonpolitical broadcasts?

Mr. PECK. If you are talking about the kinds of programming that is on television.

Senator EXON. Yes.

Mr. PECK. Yes, we think that there should not be restrictions on that.

Senator EXON. And the ACLU believes that if you want to show X-rated movies on channel 7 in Washington, DC or in Lincoln, NE, all day long, that there should be no restriction.

Mr. PECK. I would be surprised at a broadcaster who thinks that they would really get the kind of audience that would make them viable by doing so. I think the marketplace needs to decide.

Senator EXON. I am not a lawyer, but are you not begging the question—I do not want to badger the witness, but are you not begging the question a little bit with that reply?

Mr. PECK. No. I think I am saying that the ACLU's position is that there should not be any kind of restriction at all because, at least according to the courts, the only authority the FCC could properly use in terms of TV programming is a concern for unsupervised children when they happen to be in large numbers. We have the technology now for parents to be able to shut out those stations if they want to make sure that their children do not see it.

Senator EXON. But once again, the ACLU's position is that there should be no restrictions of any kind in political advertising, and I can understand and partially buy that, but it would seem to me like we have a society to protect that I am very much concerned about today, and it seems to me that it was bad enough when we had three major networks and some locals.

Now we have a menagerie of things on television through cable that concerns me a great deal, but you still feel that—and the ACLU feels that there should be no restrictions any time, and let nature take its course.

Mr. PECK. Well, Senator, not only do we feel that there should not be restrictions, but this issue really was joined in a matter that is now pending before the Federal Communications Commission.

Some of the recent congressional candidates had very graphic antiabortion ads that became an issue. The FCC started a rulemaking process to determine whether or not they could possibly exempt these ads from the no censorship provisions of the Communications Act.

We filed a brief with the FCC saying they ought to be allowed to do even these very graphic depictions because they—the candidates—believe it is an effective way of getting their point of view across.

We have no concept of "safe speech" in this country. People will have placards and pickets that show pictures that will disturb a lot of people, but we cannot say for society's benefit that we have to censor those placards.

Senator EXON. Well, that says it all. I assumed that was the ACLU's position. I do not agree with it, and I think it is the extreme of the amendment that you so fiercely—and I salute you for protecting that amendment. I think it has gone overboard.

Thank you, Mr. Chairman.

Senator INOUYE. Mr. Peck, is it not true that the courts have upheld laws that prohibit obscenity on television programming——

Mr. PECK. Yes, they have.

Senator INOUYE. Twenty-four hours a day?

Mr. PECK. Yes, they have. Obscene speech is considered unprotected by the first amendment by the Supreme Court, although the court in its decision last year——

Senator INOUYE. So, what Senator Exon speaks of can be prohibited; can it not?

Mr. PECK. The obscene material can be prohibited under the Court's decisions. He was asking about the ACLU's position, not what the law provides.

Senator INOUYE. Your position is, if a TV station wants to show for 24 hours XXX-rated movies, it is fine.

Mr. PECK. The ACLU position is that this is speech and it should be protected, and that there are alternative means for parents and individuals to control what they watch on their television set.

Senator EXON. Mr. Chairman, is there any chance of repealing the first amendment? [Laughter.]

Or is that going just a little too far?

Senator INOUYE. People have tried that. Senator Pressler.

Senator PRESSLER. Thank you, Mr. Chairman. I shall be fairly brief.

In my last campaign, I ran what I called a clean campaign. My opponent said because I was ahead in the polls I did not have to run negative ads. I did not run any negative ads and my opposition did, and my lead just kept diminishing.

I still won by a comfortable margin, but if I have another campaign and the rules are not changed, I am going to run negative ads because they seem to work. There was not a single editorial that praised me for running all positive ads or issue ads. I called mine issue ads, and I think they were. Why is it that negative ads are so effective?

I mean, a negative ad is probably more effective than a positive ad in many ways. Has that been your experience? How effective are negative ads in campaigns?

Mr. GUGGENHEIM. How effective are they?

Senator PRESSLER. Yes.

Mr. GUGGENHEIM. They are very effective. They are very effective, and——

Senator PRESSLER. Yes. I think people like negative ads better than positive ads; do they not?

Mr. GUGGENHEIM. I think the 30-second spot is very receptive to negative ads. They work very well in 30 seconds. People do not criticize them as much as they would if they were longer.

Senator PRESSLER. Well, everybody says—as you walk around, they say, well I wish all the politicians would run positive ads in this campaign, but everybody remembers the negative ads and they are all talking about the negative ads, so actually people must like them better.

Mr. GUGGENHEIM. Well, I think it is easier—they are more entertaining. Let me put it that way.

Senator PRESSLER. Especially when there is a cynicism about Government and the people who are in it. I do not happen to share that view, but it happens to be true.

Mr. GANS. I think they are effective, but there is a part, as I think my friend Charlie would probably say, of all of these ads that are attempting to attack the character of the opposition, weaken the impulse to vote for him amongst weak partisans and undecideds.

That is part of the dynamic of the 30-second spot, and that does work, but what happens is, you get this done reciprocally and you end up with a situation in which you do not like either of the guys, and so it works for one of the consultant's candidates, the other guy loses, and more people stay home. They find it more exciting.

Senator PRESSLER. The one guy runs the negative ads and the other guy does not, then it hurts the guy who does not.

Mr. GANS. That is not necessarily the case. At least two examples of people who have used it as you were trying to use it but did not necessarily get the support for it, one is Gov. Roy Roemer of Colorado, who in his first campaign for Governor used essentially the issue that he would not go negative and not use this type of demagogic ad, and throughout his campaign, and he actually won at least in part because of that issue. The other person who did this probably would have won anyway, which was the present Governor of Florida, Lawton Chiles.

I think you were not necessarily hurt by doing that. You probably were hurt a little bit by the opposition's ads, but probably you got some—and I do not know what your internal polling showed, but I expect some people respected you and voted for you precisely because you did that.

Senator PRESSLER. I did not see very many newspaper editorials.

Mr. GANS. That is a different question.

Senator PRESSLER. People did not pat me on the back as I walked about the streets.

Mr. GUGGENHEIM. It is very difficult for you to say in 30 seconds positive things about anybody in this room. It is very easy for you to do 30 seconds of negative things. Try it. A 30-second spot is receptive to the negative message. It is much easier to do. It works. To say something positive takes a longer time.

Senator PRESSLER. Of course, if there really is a character flaw in a candidate I suppose the argument is that a negative ad would reveal it. Of course, now we are talking about third-party negative ads, so I suppose the logic would be compelling that it is a necessary thing to preserve in our system.

Mr. PECK. It is often, though, awfully hard to make a distinction between what is a negative ad against the person and what is a negative issue ad—that this is the wrong side of the issue, and therefore that is why you should not vote for someone.

Senator PRESSLER. Anyway, I have decided to give everybody notice that if I should run for office again and my opponent uses negative ads, I am going to use negative ads.

Senator INOUYE. We have noted that.

Mr. Peck, you have heard Mr. Guggenheim. Would it be unconstitutional to require a full photograph of a candidate with the words, I authorize this ad, or I approve this ad, or I support this ad?

Mr. PECK. It may be constitutional. There are several prerequisites that would have to be satisfied, and the question becomes whether this is necessary to convey the information that this candidate is truly behind this ad in a way that information that currently exists in the ads does not.

That is the kind of testimony that you would need to show that there is a need, a compelling need for disclosure that does not cur-

rently occur, and then that this is the narrowly tailored way to accomplish that need.

Senator INOUYE. Thank you all very much.

Our next panel consists of the president of Jan Crawford & Associates, Ms. Jan Crawford, the president of the National Association of Broadcasters, Mr. Edward O. Fritts, and the president of Radio and Television News Directors Association, Mr. David Bartlett.

Ms. Crawford.

STATEMENT OF JAN CRAWFORD, PRESIDENT, JAN CRAWFORD & ASSOCIATES, INC.

Ms. CRAWFORD. Thank you, Mr. Chairman.

I have been a political media consultant for 23 years and over 150 campaigns from school board to Presidential. As others here, I have testified in previous years. I thank you for the opportunity to speak to you today in support of S. 329. I believe it is needed now more than ever, but for different reasons than in previous years. I will then comment on S. 829 giving support to its encouragement of longer length programming.

Today, following the FCC's 1990 self-educational broadcasting practices and the issuance of its December 1991 report and order, which requires full disclosure, candidates should be realizing benefits of lower broadcast rates. However, we continue to see campaign costs escalate. Why? How do we guarantee that the attention of Congress and its 1972 amendment to section 315 are not circumvented by various parties?

I have been witness to enormous change in the importance and influence of paid broadcast media in the election process. I have also witnessed explosive growth in the number of political media consultants. This reliance on broadcast media to deliver a candidate's message, coupled with the massive swelling of political media consultants, have contributed to today's high campaign costs.

The belief that the stations are the only culprits responsible for the spiraling cost of campaigns is erroneous. In many political campaigns today, paid broadcast media is the sole method of communicating with the voters. Television is the medium most used.

Who decides how the vast majority of the money raised for campaigns is to be spent and where? The answer is simple. The media consultants. Too many consultants, both Democratic and Republican, would rather buy fixed rates than deal with negotiations. They hire inexperienced buyers to spend millions of dollars. These young buyers fail to grasp what an avail or a gross rating point is, let alone FCC law. Strategic time buying includes knowing the law and maximizing every dollar raised. Given that most consultants are paid on a percentage basis, there is no incentive to keep media expenditures down.

I am currently conducting audits for several clients in different States for the election cycles from 1990 to 1992. Evidence shows rates declining in each cycle. However, there is a buying pattern emerging that concerns me. Too much news, and the same buys each week.

In addition, costs have continued to rise, because rather than strategic targeting, consultants believe that the more gross rating

points, the better. I am sure that every Member of the Senate has heard these words. That is why you are asked to spend so much of your time raising money. However, if your media buy is the same each week, are you reaching more voters, or just the same time and time again?

There is also evidence of time buyers paying different rates for the same programming during the same week, in some instances on the same day. If the station discloses properly and the consultant chooses to purchase some time, if not all, at a higher rate than necessary, who is responsible for the higher campaign cost?

S. 329 would alleviate many of the above problems. These would include cable systems and any other emerging communications technology, such as DBS, being required to sell time to Federal candidates at the lowest unit rate, a shorter political protection period, which would discourage some campaigns from beginning too early, and striking class from the language and clearly stating the lowest unit rate, nonpreemptible, would make the rates to be paid succinct and clear.

Now I would like to make a few comments about S. 829. I applaud Senator Dorgan on encouraging the use of longer length programming. I have been an advocate, particularly of the 5-minute length program, since my first campaign in 1970. I have purchased many 5 minutes and one-half hours over the years.

I believe the 5-minute to be the most cost-effective length of political ad. If produced properly, it draws viewers into it without their realizing they are watching a political, allowing one to provide voters with much more information than does a 30- or a 60-second spot. However, 5-minute programs are not natural blocks of times. Stations actually have to edit programming. This restricts the number of 5's available.

To state that only programs of 5 minutes or more will receive the lowest unit rate will not, in my opinion, lower campaign costs or increase the use of this type of political ad. I would recommend that stations selling 5-minute programs within the political protection period base their costs on the lowest unit rate for that time period or program rather than, as many do now, the fixed rate.

At the same time, since these are not natural blocks of time, they cannot be readily resold. I would then require that once programming, particularly for 5 minutes, has been edited, the candidate, and/or their authorized campaign committee, cannot cancel the air time.

In conclusion, I would like to reiterate my support for S. 329 and my support of greater use of longer length political programming. Buying political media time does not have to make consultants and their candidates and broadcast facilities adversaries. We can work together. We just need laws that are succinct and clear and address the actual day-to-day process.

Senator INOUYE. Thank you very much, Ms. Crawford. You have supported Senator Dorgan's bill, but that bill has another feature, that the candidate must appear 75 percent of the time.

Ms. CRAWFORD. Mr. Chairman, I think that no one would watch the ad. His picture has to be in 40 percent of the screen.

Senator INOUYE. So, you would support Senator Dorgan with that taken out.

Ms. CRAWFORD. Yes, that is right, I would.
[The prepared statement of Ms. Crawford follows:]

PREPARED STATEMENT OF JAN ZISKA CRAWFORD

Mr. Chairman, my name is Jan Ziska Crawford and I have been a political media consultant for twenty-three years in over 150 campaigns from school board to Presidential. I currently serve on the Board of the AMERICAN ASSOCIATION OF POLITICAL CONSULTANTS. My expertise in FCC law is recognized by stations, their representatives, communications attorneys and even the FCC.

As always it is a pleasure to see you. In August of 1989 I sat before this committee testifying in support of similar legislation. At that time I concluded by stating that "if indeed this legislation or one similar is enacted into law, I would hope that it be succinct and clear, leaving no room for interpretation by various parties. Otherwise, Mr. Chairman, we will be returning to this hearing room following the 1990 elections." Unfortunately, Mr. Chairman, legislation was not enacted and we are here again.

I thank you for the opportunity to speak to you today in support of S. 329. I believe it is needed now more than ever but for different reasons than in 1989. I will first address S. 329 and then comment on S. 829 giving support to its encouragement of longer length programming. However, I still believe that the lowest unit charge language should also encompass shorter length political ads. I will explain why.

S. 329

Prior to the 1990 summer audit of 30 television and radio stations across the country, many stations were selling spots to candidates at a higher rate than their "most favored advertiser". Today, following the FCC's 1990 self-education of broadcasting practices and the issuance of its December 1991 REPORT AND ORDER, requiring "full disclosure", candidates should be realizing benefits of lower broadcast rates. However, we continue to see campaign costs escalate. Why? And how do we guarantee that the intention of Congress and its 1972 amendment to Section 315 is not circumvented by various parties?

I have been witness to enormous change in the importance and influence of paid broadcast media in the election process. I have also witnessed explosive growth in the number of political media consultants. This reliance on broadcast media to deliver a candidate's message coupled with the massive swelling of political media consultants have contributed to today's high campaign costs.

The belief that the stations are the only culprits responsible for the spiraling costs of campaigns is erroneous. In many political campaigns today, paid broadcast media is the sole method of communicating with the voters. And television is the medium most utilized. Who decides how the vast majority of the money raised for campaigns is to be spent? And where? The answer is simple—the media consultants.

The FCC's 1991 REPORT & ORDER first impacted the 1992 election cycle. The Full Disclosure requirement has had the greatest effect by far. Stations have attempted to adhere to these new rules particularly in the disclosure area and that of station political policy statements. However, many interpretations and much confusion still exist. Communications attorneys give their own legal interpretation. They, however, do not understand the sales aspect of the broadcast industry. Depending on the selling practices of a station or station group, the legal interpretation can mean one thing at one station and something different at another.

Too many consultants, both Democratic and Republican, would rather buy "fixed" rates than deal with negotiations. They hire inexperienced "buyers" to spend millions of dollars. These young buyers fail to grasp what an "avail" or a Gross Rating Point is, let alone FCC law. Strategic time-buying includes knowing the law and maximizing every dollar raised. Given that most consultants are paid on a percentage basis, there is no incentive to keep media expenditures down.

I believe this legislation is needed not only for the candidates benefit but the stations' as well.

I am currently conducting audits for several clients in different states for the election cycles from 1990 to 1992. Evidence shows rates DECLINING in each election cycle from 1990 to 1992. However, there is a buying pattern emerging that concerns me. Too much "NEWS" and the same buys each week. Research shows that voters who watch the news each night are less persuadable than those that don't and they pay less attention to political ads in news programming than in other shows. More and more, it is the "undecideds" who are responsible for determining the outcome

of an election. They need to be reached through other programming and other media.

The other reason that costs have continued to rise is that rather than strategic-targeting, consultants believe that the more Gross Rating Points the better. 1 am sure that every Member of the Senate has heard these words. That is why you are asked to spend so much of your time raising money. However, if your media buy is the same each week, are you reaching more voters each week or just the same time and time again? Quality production with a succinct and clear message, coupled with a varied and targeted media plan (in conjunction with the campaign's polling data) will have an impact, No matter how much money is put into a media buy, if the message is not succinct, clear, and strategically targeted, the money for both the buy and the production has been utterly wasted.

The confusion with full disclosure is that those stations which sell time to the "highest bidder" believe that they must disclose only their lowest unit rate. Unfortunately they have been given this interpretation by many of their own communications attorneys. But the FCC has stated that any higher rates, such as "current selling level" or "effective selling level" must be disclosed as well. This enables the consultant to plan at a higher rate and then negotiate a rate which will ensure ads airing but not at the fixed rate.

Other stations who have two, three or four levels are constantly trying to keep up with weekly changes. Many of these stations were faxing new rates every three or four days.

In the audits there is also evidence of time-buyers paying different rates for the same programming during the same week. In some instances, it occurred on the same day. If the station discloses properly and the consultant chooses to purchase some, if not all, time at a higher rate than necessary, who is responsible for the higher campaign costs?

S. 329 would alleviate many of the above problems. These would include:

1) Cable systems and any other emerging broadcast technology, such as DBS, should be part of this legislation. It is my opinion that when the Communications Act was enacted and then amended, that Congress fully intended that all broadcast facilities be required to sell time to federal candidates.

2) A shorter political protection period which would discourage some campaigns from beginning too early. Also, since the FCC has ruled that outside the political protection period "comparable" rates must be charged to each candidate, there is already a level playing field;

3) By striking "class" from the language and clearly stating lowest unit rated nonpreemptible, I believe the real intention of Congress in its 1972 amendment is fulfilled. It also protects the stations from consultants purchasing spots at higher rates than necessary. The rates to be paid are very succinct and clear.

These are the main areas of the bill which are most important to me. I will suggest that Section 4 POLITICAL ADVERTISING REQUIREMENTS be clarified. When the candidate is announcing that he/she has "approved of this ad" is this in addition to or in place of "Paid for by ———"? I would require the candidate's picture and approval statement only when one candidate airs a negative ad against their opponent. That way the "attacking" candidate is tied directly to the negative comments about the opponent. Otherwise I would retain the current required disclaimer information.

Let me say just a few words about S. 829. I applaud Senator Dorgan on encouraging the use of longer length programming. I have been an advocate, particularly of five minute length programs, since my first campaign in 1970. I have purchased many five minutes and half-hours over the years. I believe the five minute to be the most cost effective length of political ad. If produced properly to draw viewers into it without their realizing they are watching a political, allows one to provide voters with much more information than does a thirty or sixty second spot. However, to state that only programs of five minutes or more will receive the lowest unit rate will not, in my opinion, lower campaign costs or increase the use of the type of political ads. I believe this for the following reasons:

1) To produce a good five minute today costs between $35,000 and $50,000. One needs to compare the air time available and its costs in relation to the production costs to see if it is a viable option for the campaign;

2) Five minute time blocs in the different day parts, particularly Prime Time, are difficult for stations to sell as they are not "natural" time blocs. Stations must edit programming to create these time slots for the candidates. One needs only to work with stations with the five minutes they are able to make available and strategically plan a five minute buy. But because fives are so limited, one also needs to pull one or two thirty second spots from the program and air those in other time periods. The results are that one reinforces the other; and

3) To require that a candidate's image fill 40 percent of the screen for 75 percent of the air time almost guarantees that no one will watch.

One last comment regarding S. 829. Many stations selling five minute programs base their costs on the fixed rate rather than the lowest unit charge for that time period or program. I believe that within the political protection period the cost of a five minute (or longer programming) should be based on the lowest unit charge for that particular time period or program. However, since these are not "natural" blocs of time which cannot be readily resold, I would require that once programming has been edited the candidate and/or their authorized campaign committee cannot cancel the air time.

In conclusion I would like to reiterate my support for S. 329 and my support of greater use of longer length political programming. Buying political media time does not have to make consultants and their candidates and broadcast facilities adversaries. We can work together. We just need laws which are succinct and clear and address the actual day to day processes.

Senator INOUYE. Mr. Fritts.

STATEMENT OF EDWARD O. FRITTS, PRESIDENT, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. FRITTS. Mr. Chairman, thank you for inviting us to participate in this hearing and thank you for your many past courtesies that have been extended to us, both by yourself and your committee, as well as your staff.

We do not oppose Senate bill 329 before us today. But with your acquiescence, Mr. Chairman, let me just talk about what we think is really at play in all of this.

I have been trying to keep up with all of the proposals on campaign reform and lowest unit rate and political reform and whatever terminology that one reads about in the paper. And it seems like there is a new bill introduced every day that one reads or hears about in the paper. And I get a memo that says, here is another one.

Quite frankly, I am pretty confused about all the pieces of legislation that have been introduced. To be very candid with you, our association and the broadcast industry takes no position on the larger issue of campaign reform. We will play by the same rules that everybody else does.

But we are concerned about the broadcast component, as you can appreciate. We have proposals by the liberal Republicans, by the conservative Republicans, by the liberal Democrats, by the conservative Democrats, by the administration, we have multiple proposals for both the House and Senate. We have different proposals for the House and Senate.

We have a number of Senators and/or Congressmen standing in the wings ready to offer amendments to change all of these pieces. It is indeed very complicated and complex.

But you know, I was listening to this panel before us earlier today, this panel, I guess, of so-called experts. There seems to be quite a large number of those people here in Washington who critique and always come out of the woodwork at election time. They have their particular proposals and ideas about campaign reform.

And someone said, gee, if you lay them all end to end, it probably would be good. Because I think, really and truly, there are 535 experts on campaign reform in the U.S. Congress.

Broadcasters are simply a conduit. We have to abide by the rules. If a candidate comes to us, we cannot censor an advertisement. We are required to sell it at the lowest unit rate, as best we

can understand the complicated rules handed down by the FCC. And I think there are a lot of misimpressions regarding this issue, particularly for broadcasters.

Some proposals would have us hand over huge chunks of free time to political candidates to toot their own horns. Some would take a 50-percent deep discount below the lowest unit rate. That is an unacceptable formula and it turns completely against us.

The provisions of S. 329, on which we have worked with you and Senator Danforth and Senator Hollings and others, we find completely acceptable in this environment. But now others have come up with a system of vouchers. Again, we do not take a position on whether public financing is right or wrong.

But just from a practical point of view, I guess that means that we stand in line for some funny money and we do not know whether they will be commissionable. We do not know where to go to collect them. We do not know if the bank will accept them. We do not know if we have to pay commission to the consultants on them if they are cashed. All we know is that they would be supervised by the FEC.

And our experience with the FEC, I might add, has not been all that good. For instance, some 2 years prior to the last election, a broadcaster said, look, I want to meet my public interest obligations to the political process, not by running paid advertising, but I would like to give both candidates equal free time, something that a lot of people in our industry would strongly oppose, as you can appreciate.

Well, when that was presented to the FEC, that became a political contribution or a campaign contribution, a corporate contribution. So, it deadlocked on it three and three and decided that we could not give free time to both candidates on an equal basis—for whatever reason I do not know. But when Congress starts saying to us, we have got to go to the FEC to collect and it cannot make a decision on something as simple as the other proposal, then I get really concerned about it.

But, you know, it seems that broadcasting, in every one of these proposals, every single one of them, is the engine driving the proposal. It is either an incentive over here or it is the carrot over there—we are going to give you more and more broadcast time and we are going to do it for less money. So, jump in and subscribe to this plan or subscribe to that plan.

If you think about it, broadcasting is already the conduit to the public; in use of debates, in public affairs programs, and extensive news coverage. I think all of us saw this in the last campaign, both at the congressional level and also at the Presidential level. And I guess what we get for that is more demands for more free time.

Here are some facts—not from Ripley's Believe It or Not—but are true facts. The cost of a campaign spot on television today is in fact less than it was 10 years ago on virtually any station in the country. That is primarily because of the glut of inventory. The cost of a campaign spot on TV today is less than it was 10 years ago.

Candidates already get a better deal than regular advertisers under the current rules. But if you look at the proposals that we have been talking about, we seem to be hearing, we want more, we want more. Let us take more of the broadcast time. Let us follow

a Canadian system or a European system. But those countries and those democracies look to us for leadership rather than us looking to them for leadership.

But the reality is that with a few exceptions in larger States, the average cost of media in a Congressional campaign is less than 30 percent. I heard Senator Dorgan say it was 70 or 80 percent for television. But in fact, according to two L.A. Times reporters who have gone through every single expenditure in the 1990 campaign, media expense is actually 29 percent.

In the wake of the FCC's latest actions revising the rules, actual money spent for television dropped in Congressional races in 1992 over what was spent in 1990. In addition, 1992 saw the greatest use of free media by candidates at the Presidential and congressional level ever.

We think we have done our part to uphold our public interest responsibilities. We want to work with the Congress. We have great concerns that we are, in all of these proposals, seemingly the common element, the engine that drives the train. We will have to give you more time or free time or deeply discounted time and quite frankly, we resent that.

Again, Mr. Chairman, we support the principles in S. 329. We have been pleased to work with you and other members of the committee to fashion those. We think that is the most reasonable solution of all this myriad of proposals that we have heard. And we are here to provide you with this information obviously and to answer any questions you may have.

[The prepared statement of Mr. Fritts follows:]

PREPARED STATEMENT OF EDWARD O. FRITTS

Thank you, Mr. Chairman, for the opportunity to testify here today. I am Edward O. Fritts, President and Chief Executive Officer of the National Association of Broadcasters (NAB). NAB represents the nation's owners and operators of radio and television stations and major networks.

Over the past several Congresses, there have been few subjects discussed more often and with more passion than campaign reform. It seems that for every member of the House or Senate, there is a thoughtful perspective on this very complicated policy issue.

Inevitably in any such discussions, the role of broadcasters comes up. Since most campaigns make use of radio and television (particularly television) to spread the word about a candidate, the costs of purchasing campaign advertising are always part of the mix.

Today, I want to address several basic points in this testimony. First is the persistent myth that the cost of buying air time is the major factor contributing to the increased cost of running for Congress. Second, I wish to raise some constitutional questions which are related to this whole discussion.

And finally, I want to point to a reasonable compromise which addresses Members' concerns in this area, one which the National Association of Broadcasters does not oppose.

CAMPAIGN ADVERTISING IS ONLY ONE ASPECT OF CAMPAIGN COSTS

We recognize that broadcast time can be a significant component of campaign expenses in some campaigns, but not nearly as much as many of the estimates that observers and even candidates themselves have suggested.

Following the 1988 elections, NAB contracted with Aristotle Industries to conduct an analysis of campaign spending. This study combed through Federal Election Commission pending reports. From that analysis of actual spending in the 1988 House and Senate campaigns, we learned that on average, Senate campaigns spent 41.1 percent of their funds on radio and TV time, while House candidates spent just 19.3 percent. Those figures do not include the cost of producing radio and TV spots,

time buyers and consulting fees, or other related costs which are sometimes lumped into the overall cost of media.

Clearly, in some hotly-contested races, spending was higher. But for many races, spending was also much lower than those percentages.

At the time we made those figures available, many in Congress doubted their accuracy. But two Los Angeles Times reporters—Sara Fritz and Dwight Morris—did an even more exhaustive study of campaign spending following the 1990 elections.[1] The two reporters looked at every single FEC report for every single campaign expenditure during the 1990 election cycle—over 400,000 transactions—and analyzed the various ways candidates spent their money. Those results totally validate our 1988 findings.

In their recent book, Fritz and Morris debunk the myth that radio and TV time is the major cost of most campaigns. In fact they refer to that idea as "the biggest misconception in American politics today." According to these reporters, candidates spend huge sums of campaign dollars on totally unrelated items, including office space rental, flowers and cards or constituents, postage, car leases, fund-raising costs and other items.

According to Fritz and Morris, only 29 percent of the funds spent by candidates for Congress in 1990 went for radio or TV advertising and media consultants. On average, Senate campaigns spent 35 percent of their funds for such expenditures, while House candidates averaged only 23 percent for media costs.

In concluding their look at media costs, Fritz and Morris said:

> "[Reducing the cost of campaigns] probably would not create the huge windfall anticipated by some proponents of cut-rate media. Nor would it necessarily bring down overall campaign costs. On the contrary, if broadcast costs were lowered, members of Congress would probably invest the savings either in buying more television time or in building a strong, more elaboratepermanent campaign organization."[2]

In addition, Fritz and Morris detailed a number of members of Congress who actually spent large amounts for television advertising in 1990, even though they had no opponent. Thus, it is not a "given" that radio and TV time is a huge, necessary element in the cost of many campaigns—in fact, as both the Aristotle and the Fritz/Morris studies show, that perception is not reality.

In addition, a look at figures for the 1992 elections shows that TV advertising was even less of a factor last year. Because while overall spending for House and Senate campaigns increased 52 percent to $678 million,[3] the amount spent on TV advertising for those same races was just $170 million,[4] or 25 percent.

What is a reality, however, is that recent elections have seen more and more power within campaigns being given to media consultants. These strategists have more influence over candidates than any other professionals, and in fact. it is these consultants who decide how much advertising time to buy and at what rates to buy it.

Fritz and Morris also address this issue in their book:

> "No matter how their rates are structured, media consultants seldom make their biggest profit on the retainer or production costs. Their profit is earned primarily through a 15 percent surcharge they levy on all television time purchased for airing the candidate's ads."[5]

Thus, the very people deciding how much media time should be purchased have an inherent conflict of interest, since the more time is purchased, the higher their commission.

CONFLICTS BETWEEN BROADCASTERS AND CANDIDATES

Another complicating factor is that the buying of time for TV and for some radio stations has changed over the years. Instead of using rate cards, many stations now hold what could be best described as a weekly "auction" of commercial time. Buyers purchase time with the knowledge that if another advertiser offers more for the same spot, the original spot is "bumped" or preempted. By offering more, buyers ensure that their spots will not be preempted. Such a system makes the job of defining lowest unit rates for candidates much harder particularly for broadcasters who want to comply with the rules but are sometimes confused by them.

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[1] Fritz, Sara and Morris, Dwight, Handbook of Campaign Spending: Money in the 1990 Congressional Races, Congressional Quarterly, Washington, DC, 1992.

[2] Id. at 53.

[3] Federal Election Commission press release, March 4, 1993.

[4] Television Bureau of Advertising press release, February 11, 1993.

[5] Fritz and Morris, supra, at 48.

Candidates and their time-buyers often need, demand and expect non-preemptible spots. On the other hand, most commercial advertisers can live with the chance that their spots may be preempted by higher-paying advertisers. As a result, candidates may pay more than commercial advertisers, leading to misunderstandings between stations and candidates.

Layer onto that the incredible complexity of the FCC's rules, and one can understand candidate concerns as to whether they are getting the "lowest unit charge," as Congress intended. This situation is exacerbated by the Commission's failure to act promptly on written requests for rules interpretations, or to document significant staff-level telephone interpretations in writing.

In short, political broadcasting is characterized by:

- Political consultants with an "incentive" to spend more dollars than necessary * * *
- Candidates who need non-preemptible spots * * *
- and FCC rulings that have become extremely complex.

These are just some of the problems that must be considered when dealing with the issue of lowest unit rates for candidates.

DEEP POLITICAL DISCOUNTS WILL HURT STATIONS AND THEIR SERVICE TO THEIR COMMUNITIES

Let me lay to rest another myth—that political advertising revenue is so minimal to broadcasters that changes in the rules will have no significant effect on TV and radio stations. This assumption is totally false.

At the local level, the impact of political advertising can be dramatic. In the 1988 elections political advertising as a percentage of total time sold ranged often exceeded 5 percent of that year's income for local television stations. In Sioux City, Iowa, for example, political advertising was 7.1 percent of those stations' income that year.[6] If the station had been required to be give that time away, the financial impact would have been serious. We presume Congress would not want local stations to be forced to trim their news or public service because free or nearly free ads for political candidates put them under financial strain.

Stations are like any other business—without revenue, they go out of business. Broadcasters' only source of income is advertising, and to require stations to give away free time or time which is severely discounted can only mean less revenue with which to serve the local community.

Remember, too, that political advertising hits disproportionately in the fourth quarter of the year, which is a peak time for advertising demand and the key to station profitability.

Thus, any changes to current rules on lowest unit rates will have a direct impact on local broadcasters' viability.

POLITICAL AD LAWS RAISE CONSTITUTIONAL CONCERNS

While broadcasters have demonstrated a continued willingness to work with Congress to resolve some of the issues relating to political advertising, we should mention that there continue to be serious concerns raised about the constitutionality not only of the bills introduced in this Congress on this subject, but also about the entire concept of mandated lowest unit rates.

Attached to this testimony is a constitutional analysis of the entire political advertising regulation system. We believe this raises significant constitutional issues which Congress should be prepared to address in whatever bills are considered. We hope that members of this panel will give these concerns serious thought as they view any proposed changes to current lowest unit rate rules.

VOUCHERS—NOT THE SOLUTION

One scheme being considered as part of the campaign reform package is the use of "vouchers" in order to assist candidates in purchasing broadcast time.

While we take no position on the issue of public financing, we have some serious reservations about the creation of a voucher system. Who will administer such a bureaucracy? When will broadcasters be able to redeem these vouchers? How will candidates keep track of how much they have in their voucher accounts? What happens if the money raised to pay for vouchers is not adequate to meet the number of vouchers used by candidates in a given election?

We are extremely troubled by such a new system, which leaves many of these questions unanswered. Such a system also would run counter to the proposal found

[6] 1991 NAB/BCFM Television Market Analysis at 109.

in S. 329 which requires that in order for a spot to become non-preemptible, it must be paid for by the candidate. Yet a voucher is not a payment—it is really more like an IOU to be cashed in later.

NAB strongly opposes the idea of using vouchers in dealing with campaign advertising. We would hope Congress would want to simplify the present system, not make it even more arcane through the addition of vouchers.

BROADCASTERS OPPOSE ANY MANDATED FREE TIME PROPOSALS

Another idea being suggested to lower the cost of campaigns is to force radio and TV stations to turn over large blocks of free air time to candidates or political parties for their use as they see fit. One such bill in the other body, H.R. 449, authored by Representative Tom Bliley, would require that every radio and TV licensee provide eight hours of free time each year. Each station would be forced to provide two hours each to the state and national organizations of both the Democratic and Republican parties, with one half of that time to be allocated during weekday prime time viewing hours.

Needless to say, Mr. Chairman, NAB strenuously opposes this scheme or any other free time proposal for a number of reasons.

Such requirements are of questionable constitutionality. They would impose severe economic hardship on many stations. They do not adequately address problems in major metropolitan areas or areas where more than one state is served by a broadcast station. They are simply unworkable.

The fact is that many stations already offer candidates free time voluntarily. Stations make large commitments to political coverage in their news and public affairs programming. Many stations carry or even arrange debates between candidates, as well as public affairs interviews and candidate forums. State broadcaster associations often set up statewide networks to carry such debates and appearances by candidates.

Often, one or the other candidate refuses to appear at such debates, despite efforts by broadcasters to provide free time for these appearances. One NAB survey conducted after the 1986 elections found that 56 percent of stations had offered free time to candidates for debates, but that half of those offers were rejected by one candidate or the other.

Candidates want free time for their tightly-produced messages, not for actual, face-to-face discussions. "Spin doctors" have a much harder time controlling the outcome of a debate than they do commercials.

Beyond these points, free time would raise serious havoc with stations during the fourth quarter of the calendar year, since such time would come at the peak of demand for broadcast advertising inventory. The huge impact of such free time requirements would be devastating to most broadcast stations.

In short, mandated free time is the wrong answer—wrong for broadcasters, wrong for voters, and wrong for candidates.

BROADCASTERS AND CANDIDATES NEED FAIR LEGISLATION

Mr. Chairman, one proposal which NAB does not oppose is the approach taken by Senators John Danforth, Ernest Hollings, and yourself in your bill, S. 329, introduced earlier his year.

S. 329 provides for candidates to receive fixed (non-preemptible) spots at the lowest preemptible rates for that amount of time and time period in a given week, and eliminates class distinctions between types of commercials. By removing the threat that spots would be preempted, candidates and their time-buyers are assured that their messages will air when they are scheduled. In addition, broadcasters will be able to make simpler calculations in determining the actual "lowest unit charge" for each spot aired.

This legislation also includes several provisions that NAB suggested to the bill's sponsors.

First, the bill would shorten the "windows" during which lowest unit rates apply. Under current regulations, candidates are eligible for lowest unit rates during the 45 days prior to a primary election and 60 days prior to the general election. Under S. 329, those time periods would be shortened by 15 days each. This would help minimize the impact of reduced revenues on broadcasters, and should have the side benefit of shortening what many observers view as overly-long campaigns.

Second, the bill provides that all spots remain preemptible until actually paid for by the candidates. This is an important provision which would prevent candidates from reserving large blocks of fixed commercial time and then canceling at the last moment, thus leaving broadcasters unable to "re-sell" that time to other advertisers, including other candidates. Even if such a sale could occur, we believe the prices

for that time would be greatly diminished, thus driving lowest unit rates even lower for that time period—in essence, a double hit on broadcasters. To fix a spot, a candidate need only pay for it—a fair and rational system.

Finally, the bill includes a provision that removes any penalty for spot preemption when programs are preempted. This is necessary because of the unpredictability of broadcasting—breaking news, football games which go into overtime, etc. In such cases, programs can be preempted, and it is important that stations not be penalized for those occasions where preemption of a program and its spots are required by circumstances beyond broadcasters' control.

We believe this legislation strikes a balance between the candidate's need to obtain lowest unit rates and more certainty about their spots running at the chosen times, and the broadcaster's need to have a fair manageable and understandable system to follow. Candidates will be assured of a discount over other commercial clients, while broadcasters will maintain needed revenues to support their service to their local communities.

SUMMARY

In conclusion, we believe that as part of any omnibus campaign reform legislation, Congress should include the elements of S. 329 in that package. Such legislation would provide a fair compromise between candidates and broadcasters.

We cannot support any legislation which would further reduce political advertising rates he low what S. 329 provides. Using broadcasters as the "bait" to get candidates to accept voluntary spending limits is an unfair singling out of our industry to bear the brunt of such costs. And as we outlined in this testimony, such reductions in advertising costs will not lead to reduced spending.

We want to work with you and your subcommittee on this issue, and we look forward to discussing these proposals with you.

Again, thank you for the opportunity to appear here today to discuss this important topic.

MEMORANDUM ON CONSTITUTIONAL INFIRMITIES OF POLITICAL BROADCASTING LEGISLATION

SUMMARY

The proposed political broadcasting legislation currently pending before Congress raises substantial issues under both the First and Fifth Amendments to the United States Constitution. Not only does it force broadcasters to carry political speech, but it does so under conditions that single out broadcasters for unequal treatment and confiscation of advertising time, services and facilities. These encroachments on First and Fifth Amendment rights are neither justified by the alleged scarcity of broadcast frequencies nor effective to achieve their stated purposes—(a) to enhance diverse, locally-based and universally available political speech and (b) to reduce campaign expenditures. In constitutional terms, they represent overly broad and excessive intrusions into the-protected rights of broadcasters in an attempt to achieve political goals that could be reached through more narrowly tailored means.

The constitutional infirmities of these proposals may be summarized as follows:

1. Even if the existing mandate of "reasonable access" under §312(a)(7) of the Communications Act might still pass constitutional muster, which is doubtful, the proposed requirements that broadcasters subsidize or broadcast political speech without charge violate the First Amendment.

2. By singling out broadcasting[1] from other media and usurping broadcast facilities and time, the proposed legislation denies broadcasters equal protection of the law and takes their property without just compensations in violation of the Fifth Amendment.

3. Government licensing of the broadcast spectrum based on questionable "scarcity" theories is no longer an adequate justification for legislation mandating broadcast of political speech and cannot support a mandate of privately-subsidized or free political advertising.

4. The governmental goals of encouraging diverse, locally-based and universally available political speech and reducing campaign expenditures, even if compelling, can be achieved through more narrowly tailored means. Moreover, the "compelling" nature of these supposed purposes is subject to serious question because the legisla-

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[1] Cable television operators may also be subject to certain requirements at issue here. Compare 47 U.S.C. §315 (equal opportunity and lowest unit rates applied to cable) with 47 U.S.C. §312(a)(7) ("reasonable access" apparently not applied to cable).

tion is substantially under-inclusive by focusing only on the broadcast media and is of questionable effectiveness.

For all these reasons, it is our view that those aspects of the legislation mandating and subsidizing the broadcast of political speech are likely to be held unconstitutional by the courts.

I. FIRST AND FIFTH AMENDMENT INFIRMITIES OF EXISTING AND PROPOSED LEGISLATION

Many elements of both the existing and the proposed legislation are suspect under the Constitution. For ease of analysis, they can be grouped into the following categories: (1) requirements that broadcasters air the political speech of candidates or others (for instance, mandatory "reasonable access" for federal candidates); (2) requirements that broadcasters subsidize speech through discounted advertising rates for which candidates and others would not ordinarily qualify (for instance, "lowest unit rate" requirements); (3) requirements that broadcasters air speech free of charge (free or "voucher" provisions)[2]; and other provisions that implement these requirements (i.e., notice and related requirements). The following discussion outlines the constitutional infirmities in each of these proposals and analyses the questionable justifications that are likely to be argued in their support.

A. Forced Political Speech Raises Serious First Amendment Questions

There is no doubt that political speech, and particularly speech concerning candidates for office, is at the core of the speech protected by the First Amendment. *First National Bank of Boston* v. *Bellotti,* 435 U.S. 765, 776-777 (1978); *Buckley* v. *Valeo,* 424 U.S. 1, 14 (1976). The fact that broadcasters are paid for airing political advertisements in no way diminishes this First Amendment protection or transforms either paid or voluntary political speech into commercial speech entitled to less constitutional protection. *First National Bank of Boston* v. *Bellotti,* supra; *New York Times Co.* v. *Sullivan,* 376 U.S. 254, 266 (1964) (full protection for advertisement on political subject). It is also axiomatic under the First Amendment that a mandate to speak in a certain way is as suspect as a prohibition against speaking on a subject. *Pacific Gas & Electric Co.* v. *California P.U.C.,* 475 U.S. 1 (1986); *Wooley* v. *Maynard,* 430 U.S. 705 (1977).

Government preference or prohibition of a particular category of speech based on its content is particularly repugnant under the First Amendment. *FCC* v. *League of Women Voters,* 468 U.S. 364, 383 (1984); *Consolidated Edison Co. of New York* v. *Public Service Comm. of New York,* 447 U.S. 530, 537 (1980). Indeed, content-based regulation is subject to the most stringent First Amendment tests—that the regulation directly advance a compelling state interest and be as narrowly tailored as possible to achieve that interest. *Texas* v. *Johnson,* 491 U.S. ——, 105 L. Ed. 2d 342 (1989); *Boos* v. *Barry,* 485 U.S. 312 (1988). Compare *U.S.* v. *O'Brien,* 391 U.S. 367, 377 (1968) (lesser test for content-neutral, "incidental" infringements). Thus, a regulation that forced publication of political speech because the government preferred its content ordinarily would not survive the lightest breeze of the First Amendment. The fact that a broadcaster must publish over a government licensed radio frequency does not avoid the constitutional inquiry.

Proponents of the advertising legislation undoubtedly will point to *CBS, Inc.* v. *FCC,* 453 U.S. 367 (1981), which upheld the existing requirement that broadcasters give "reasonable access" for political advertising by federal candidates during elections. That decision, however, was based on a record describing a market that provided far fewer outlets for electronic distribution of programming, was founded on the "limited" nature of the intrusion, and examined regulations that gave at least some regard to broadcasters' "reasonable" discretion.[3] Even disregarding the significant changes in the electronic media market since *CBS,* any broader and less flexible mandate of enforced access, such as the current proposals,[4] would constitute a far greater and even less justified intrusion into the First Amendment protected discretion of broadcasters.

B. Requiring Broadcasters to Subsidize or Give Away Advertising as a Political Contribution Is Even More Suspect Under the First Amendment

A mandate to publish speech based on its political content raises serious constitutional questions, as noted above. But here, that mandate is coupled with a require-

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[2] Payment with vouchers may turn out to be no payment at all if funding is not available.

[3] See also footnote 4, infra.

[4] Proposed legislation includes requirements that broadcasters air statements ranging in length from one to five minutes (regardless of the broadcaster's own editorial preference) and statutorily imposes a requirement that broadcasters publish ads during specified times of day or in conjunction with particular programming.

ment that broadcasters subsidize or give away political advertising to those whose speech they must publish. Such a requirement, either independently or when coupled with a mandate to publish, operates as government favoritism for a certain type of speech, and as such at least requires searching constitutional scrutiny. Even more troubling, however1 that requirement would force broadcasters to make contributions of advertising, services and broadcast facilities to candidates they might not otherwise choose to support, all in violation of the First Amendment protected right to support and oppose candidates through expenditures or otherwise. See *Buckley* v. *Valeo,* supra; *Austin* v. *Michigan Chamber of Commerce,* —— U.S. ——, 110 S. Ct. 1391, 1407 (1990) (Brennan, J., concurring) (First Amendment issues relating to forced political contributions).[5]

C. The Legislation Violates the Fifth Amendment by Governmental Takings of Property Without Just Compensation

The various legislative proposals include requirements that federal candidates receive blocks of free commercials and programming, as well as advertising rates that are substantially below market value. These proposals on their face appear to be an uncompensated taking of private property prohibited by the Fifth Amendment, which provides that "private property [shall not] be taken for public use, without just compensation."[6] This guarantee is designed to "bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Penn Central Transportation Co.* v. *New York,* 438 U.S. 104, 123 (1978) (quoting *Armstrong* v. *United States,* 364 U.S. 49 (1960)).

Any governmental action that effects even a minor taking of property rights brings into question the constitutional obligation to pay just compensation, as measured by market value at the time of the taking. *Loretto* v. *Teleprompter Manhattan CATV Corp.,* 458 U.S. 419 (1982); *United States* v. *Fifty Acres of Land,* 469 U.S. 24, 29 (1984). Just compensation must be paid whether the intrusion is comparable to an easement, *Nollan* v. *California Coastal Commission,* 483 U.S. 825, 831-32 (1987), or more permanent, as in *Loretto,* and regardless of the degree of economic impact or the public interest asserted (which is particularly suspect here because of its content sensitivity).[7]

Two property rights are implicated by the Senate proposals: first, the broadcasters' rights in station facilities and work of station personnel; and second, the value that inheres in the license through the investment of capital and effort to create and maintain an ongoing broadcast station where there would otherwise be only a bare frequency allocation.[8] The market value of advertising reflects both of these property interests.

Congress has already attempted to side-step market value determinations in § 315(b) of the Communications Act. Under this section a legal fiction allows political candidates to obtain the same low rate as a broadcaster's largest volume advertiser, a presumption that is at least suspect under the Fifth Amendment. But the new proposals do not even attempt such a rationalization; they simply appropriate half or even all the value of the broadcaster's investment in that advertising time.[9]

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[5] The "lowest unit rate" requirements also are suspect under this First Amendment analysis, as well as potentially operating as a taking of broadcasters' property rights. Existing "lowest unit rate" requirements are based on a fiction that grants politicians a favored position over other advertisers who day in and day out provide the financial cornerstone for broadcasters. A further lowering of these rates (i.e., by picking the lowest available rate over the prior twelve months or an extension of the applicable time periods) produces a greater taking and forces a larger political contribution by broadcasters. As such, new proposals would lessen the likelihood that lowest unit rate requirements would survive a constitutional challenge.

[6] The limited right of reasonable access approved by the Supreme Court in *CBS* v. *FCC,* gas predicated on payment of compensation to the broadcaster. As we discuss, the record offered to support *CBS* would be vastly changed in today's electronic information marketplace. But even if that decision survived the change in its underlying rationale, the Court's ruling still assumed a Fifth Amendment limitation on a congressionally mandated right of access: "No request for access must be honored * * * unless the candidate is willing to pay for the time sought." *CBS* v. *FCC,* 453 U.S. at 382, n. 8.

[7] The assertion that political advertising revenues constitute only a small fraction of all broadcast revenues is thus irrelevant for determining whether a taking of property would occur under these provisions. 137 Cong. Rec. 5479 (daily ed. January 14, 1991) (statement of Sen. Mitchell).

[8] It is sometimes argued that broadcasters have no property rights in their licenses because they are granted by the government only for a specified term and may be altered during their term to avoid interference problems. See generally, *FCC* v. *Sanders Brothers Radio Station,* 309 U.S. 470 (1940). This argument, however, disregards the facts that there is a legitimate renewal expectancy, and that there must be truly compelling cause for revocation of the license during its term.

[9] In contrast, in the *CBS* cases former president Carter sought one-half hour of programming time and offered "to pay the normal commercial rate." *CBS,* 453 U.S. at 393.

D. The Proposed Legislation Denies Broadcasters Equal Protection Guaranteed by the Fifth Amendment

Classifications that impose unequal burdens on the exercise of fundamental rights are suspect under the equal protection principles of the Fifth Amendment. See e.g., *Police Department of Chicago* v. *Mosley,* 408 U.S. 92 (1972).[10] Such governmental action can only survive if it is narrowly tailored to serve a substantial governmental interest. Id. at 99-101.

Until recently, regulators and the courts have relied somewhat uncritically on the concept of spectrum scarcity to justify greater regulatory burdens on broadcasting than on all other media. See. e.g., *FCC* v. *League of Women Voters,* supra.[11] Today's legislation, however, goes far beyond even existing burdens. It would strip broadcasters of previously recognized First Amendment rights to exercise editorial judgment in providing reasonable access. It would also require broadcasters to subsidize electioneering in a manner required of no other media or business entities. Both types of discrimination are suspect under the Constitution.

Neither scarcity nor any other justification can support a law that would require broadcasters, but not others, to subsidize the American federal electoral system. The interest in reducing campaign expenditures may indeed be significant. But it is not a sufficient reason to shift part of the cost to a selected advertising medium. If the governmental goal is to subsidize the cost of federal campaigns, then the equal protection principles of the Constitution require that this burden be distributed fairly and equally.

II. THE EXISTENCE OF GOVERNMENT LICENSING OF THE BROADCAST MEDIUM IS INSUFFICIENT SUPPORT FOR THE LEGISLATION AND ANY COMPELLING GOVERNMENTAL PURPOSES MAY BE SERVED THROUGH MORE DIRECT OR NARROWLY TAILORED MEANS

First Amendment challenges to regulation of the broadcast medium, of course, are nothing new. See e.g., *National Broadcasting Co.* v. *United States,* 319 U.S. 190 (1943); *Red Lion Broadcasting Co.* v. *F.C.C.,* 395 U.S. 367 (1969); *Columbia Broadcasting System* v. *Democratic National Comm.,* 412 U.S. 94 (1973). Yet even the most recent challenge to the existing "reasonable access" requirements in *CBS* v. *FCC,* supra, occurred more than a decade ago, and the "lowest unit rate" requirement has not been reviewed by the Supreme Court. The new proposals would substantially exacerbate these already questionable burdens on First Amendment freedoms. The following is an overview of the failings of traditional justifications for broadcast regulation when applied to both existing and proposed legislation.

A. Government Licensing of Spectrum and the Questionable Scarcity of Electronic Means for Broad Distribution of Speech Does Not Support the Legislation

There is little question that the avoidance of frequency interference and other spectrum problems is a sufficient reason for government regulation of broadcast frequencies. Licensing for those purposes is not inherently unconstitutional, nor does the First Amendment necessarily prevent content-neutral mechanisms serving goals like diversity of ownership or local and universal service. See, e.g., *Metro Broadcasting, Inc.* v. *FCC,* 497 U.S. ——, 111 L. Ed. 2d 445 (1990); *FCC* v. *National Citizens Comm. for Broadcasting,* 436 U.S. 775 (1978). Such regulations, however, raise significantly different issues than content-sensitive mandates to broadcast or subsidize a governmentally designated category of speech.[12]

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[10] Although *Mosley* analyzed that equal protection claim under the 14th Amendment, the Constitution's equal protection guarantee is equally binding on the federal government through the Fifth Amendment.

[11] The scarcity rationale for content regulation has come under increasing scholarly and judicial attack as incapable of supporting content regulation. See discussion at footnotes 13 and 14, infra.

[12] There is a critical distinction between regulation and licensing with the goal of picking qualified licensees and regulation that forces publication of and subsidy for a particular kind of speech because of its content. The former allows review of a licensee's performance to measure good faith and reasonable efforts to respond to community interest and satisfaction of minimum performance criteria in the public interest, i.e., issues responsive programming. The latter forces speech and requires broadcasters to subsidize a particular kind of speech during a license term. The former comports with the requirement of minimum intrusion commensurate with the necessity of licensing. The latter founders because such political speech will be heard over a broad range of media and from a range of voices even without the requirement and because it is not necessary to selection of licensees to serve the public interest.

First, the presumed scarcity of media for mass distribution of video and audio information is at least subject to serious question today.[13] See 102 F.C.C.2d 145 (1985); *Syracuse Peace Council* v. *F.C.C.*, 867 F.2d 654 (D.C. Cir. 1989), cert. denied, —— U.S. ——, 107 L. Ed.2d 737 (1990); *Telecommunications Research & Action Center* v. *F.C.C.*, supra. As a result, the traditional and undifferentiated claim that spectrum scarcity justifies regulation is far weaker today than in the past.[14] Second, the need for government allocation and licensing to avoid interference, even under historical conditions of scarcity, does not require favoritism for particular speech or speakers based on the content of messages. And the need for some criteria for choosing among multiple applicants should not serve under the First Amendment as the basis for content-sensitive regulation or undue intrusions into the editorial discretion of broadcasters. *FCC* v. *League of Women Voters,* supra. Indeed, a consistent theme in all the Supreme Court's decisions concerning broadcast regulation is that whatever intrusions are necessary because of government control of frequencies should be as narrowly tailored as possible consistent with a compelling governmental interest. Id., 468 U.S. at 380.

Finally, the tying of mandated or discounted broadcast requirements to the licensing of frequencies would raise serious questions under the doctrine that government may not, consistent with the First Amendment, condition the grant of a government benefit on the sacrifice of a constitutional freedom. *Speiser* v. *Randall,* 357 U.S. 513 (1958); *Rutan* v. *Republican Party,* 497 U.S. ——, 111 L. Ed. 2d 52 (1990).[15] Simply put, broadcasters do not lose their First Amendment freedoms merely because the FCC grants the licenses under which they operate. *FCC* v. *League of Women Voters,* supra. See also 47 U.S.C. § 326 (barring censorship).

B. The Interest in Diverse, Universal Speech on Political Campaigns Can Be Served by Constitutional Means and the Legislation Is Under-inclusive in Serving that Goal

The government interest in encouraging diversity of speech reaching the American public about political campaigns is a compelling one. Yet, this conclusion does not remove the requirement that the means chosen must directly advance this goal and be as narrowly tailored as possible. Nor does it absolve the government's intrusion into broadcasters' First Amendment rights if the means chosen are so underinclusive as to suggest the government is burdening a speaker for other reasons and is not serious in its purpose.

1. The Means Chosen Do Not Serve and Are Not Narrowly Tailored to Achieve that Compelling Interest

There is superficial appeal to the notion that less expensive broadcast time will automatically produce greater diversity in political speech. But the First Amendment does not permit lawmakers the luxury of merely assuming that result; the notion must be searchingly examined. First, will more diverse viewpoints indeed be expressed, or will the same speakers simplypurchase more of the same advertisements? Will diversity be enhanced or will newly available funds simply be shifted to other media? These and other questions must be answered under the First Amendment, which requires any regulation at least to be effective in achieving the government purpose.

Second, there are serious questions about whether the regulations are necessary and narrowly tailored to achieve this purpose. Fundamentally, one must ask whether this further Intrusion into broadcasters' First Amendment rights is necessary given the number and diversity of broadcast and other media channels available

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[13] As the Supreme Court has noted with regard to the broadcast industry, "solutions adequate a decade ago are not necessarily so now, and those accepted today may well be outmoded 10 years hence." *Columbia Broadcasting System* v. *Democratic National Comm.,* 412 U.S. at 102. In 1986, then Judges Bork and Scalia observed: "The basic difficulty in this entire area is that the line drawn between print media and the broadcast media, resting as it does on the physical scarcity of the latter, is a distinction without a difference. * * * Since scarcity is a universal fact, it hardly explains regulation in one context and not another." *Telecommunications Research and Action Center* v. *F.C.C.,* 801 F. 2d 501 (D.C. Cir. 1986).

[14] It also has been suggested that, "spectrum scarcity, without more, does not necessarily justify regulatory schemes which intrude into First Amendment territory." *Syracuse Peace Council* v. *F.C.C.,* 867 F.2d at 683 (Starr J., concurring).

[15] Ir. *F.C.C* v. *National Citizen's Comm. for Broadcasting,* 436 U.S. at 800-801, the Supreme Court rejected a claim that a grant of spectrum was conditioned improperly on "forfeiture of the right to publish a newspaper" because of newspaper/broadcast cross.ownership prohibitions. The Court, however, expressly noted that this condition was not predicated on content, but rather ownership criteria. Here, broadcasters would be forced to publish and subsidize political candidates' speech, a form of speech identified by its content, solely because they have been granted a spectrum license.

today. Other less intrusive means also must be addressed: Could greater diversity be achieved through more public funding of campaigns? Could reallocation of existing public campaign funding produce greater diversity?

2. The Legislation Singles Out Broadcasters and Is Seriously Under-inclusive

Broadcasting undoubtedly is a powerful medium for conveying the messages of political candidates and their supporters. On the other hand, few would question that direct mail, magazines, newspapers and other media also may be as far reaching or as locally targeted, and like broadcast stations, often make substantial use of government streets, the radio spectrum, the postal system or other governmentally controlled facilities. The failure of the legislation even to seek to address the goal of increasing political campaign speech through other media raises the equal protection problems discussed above. But even more fundamentally, it suggests a greater concern in Congress with achieving lower rates for television and radio spots than on the asserted interest in communicating diverse campaign information to the public. Such under-inclusiveness leads to questions about the seriousness of the asserted purpose of achieving diverse political speech. *Florida Star* v. *B.J.F.*, 491 U.S. 524 (1989); *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U.S. 221 (1987).

C. The Interest in Reducing Campaign Expenditures Could Be Served by More Narrowly Tailored Means, May Not Be Served by This Legislation, and the Legislation Fails to Address Other Causes of Growing Campaign Expenditures

Proponents of the legislation also have suggested that it will serve to reduce campaign expenditures, although it would do so through enforced contributions by broadcasters. This interest, though it may on the surface appear to be a compelling one,[16] also is unrelated to and does not support the legislation.

1. The Legislation Neither Achieves Nor Is Narrowly Tailored to Serve This Purpose

A cornerstone assumption of the legislation is that lower advertising rates in the broadcast medium will produce lower campaign expenditures and reduce the need to raise money—all presumably with the benefit that the public will perceive that candidates and officials will be less beholden to donors. This chain of assumptions, however, must also be subjected to searching scrutiny under the First Amendment. Is it not equally likely that more broadcast ads will be bought if rates are lower, simply causing the same expenditure of campaign funds, totally at the expense of broadcaster editorial discretion? Will the same funds be spent, but simply on other media? Does the public perceive a lack of political integrity simply because more money is spent on advertising? Or if one plausible result occurs, would an increase of recently fashionable negative political ads on television and radio lead the public to perceive less integrity in the political process? Until these and other questions are answered, it is difficult to know whether the legislation does directly advance this allegedly compelling interest—and thus doubtful whether the legislation could pass constitutional muster.

Second, the First Amendment again requires an inquiry into whether more narrowly tailored alternatives would serve this interest. Has the government exercised its full authority under *Buckley* v. *Valeo* and *Austin* v. *Michigan Chamber of Commerce*, to address this issue by limiting the level of contributions? Could the reward of public funding be used to induce candidates and campaigns to spend less? Will the requirement that candidates state they have or have not complied with spending limits achieve the government's purpose in discouraging expenditures? Until these and other alternatives are exhausted, the rights of broadcasters should not be further infringed.

2. The Legislation Fails to Address Many Other Causes of Growing Expenditures

The under-inclusiveness of the legislation is perhaps even more stark when it is viewed as a solution to the purported problem of excessive campaign expenditures and resulting public perception of lack of integrity. Here, the range of potential causes of the problem not only includes the multiplicity of other media in which campaign funds may be expended, but such causes as multiple primaries, lack of coordination and the timing of primaries and elections, and the growth of political conventions. Until a more comprehensive inquiry and solution is undertaken, the se-

[16] *Buckley* v. *Valeo* strongly suggests that the mere reduction of expenditures, in itself, is not a compelling governmental interest. "[T]he mere growth in the cost of federal election campaigns in and of itself provides no basis for governmental restrictions on the quantity of campaign spending * * *" 424 U.S. at 57.

lective focus on broadcast expenditures, and reduction of them at the expense of broadcasters, are constitutionally impermissible.

CONCLUSION

The existing mandate of "reasonable access" is suspect under today's conditions and evolving interpretations of the First and Fifth Amendments. Any extension of that mandate to further limit broadcasters' discretion would exacerbate the constitutional difficulties, further erode broadcasters' discretion, and render the "reasonable access" mandate even more suspect.

Existing law and some current proposals rely on the fiction that political candidates can be equated with advertisers that qualify for the lowest unit charges. But other proposals discard even this fiction and impose a blanket requirement of free or discounted ads. Proposals that appropriate blocks of broadcasters' time and facilities for government sanctioned speech undoubtedly are among the most constitutionally objectionable. Not only are broadcasters forced to publish and make campaign contributions in violation of the First Amendment; they also are disproportionately burdened and have their property taken without compensation in violation of the Fifth Amendment.

Existing FCC interpretations and some legislative proposals would mandate grants of free time to candidates when broadcasters oppose them in editorials or "independent" groups oppose them in advertisements. These requirements raise the same issues as other free or discounted ad provisions, but with an added infirmity—broadcasters are punished for taking editorial positions or airing independent ads with a substantial chilling effect on broadcasters' speech.

Combining elements from the pending proposals with existing legislation undoubtedly would produce an even deeper intrusion into broadcaster discretion and thus the greatest likelihood that neither existing nor proposed legislation would survive scrutiny by the courts. Those who take comfort from past judicial decisions sustaining regulation of broadcasters should be cautious in seeking to extend those decisions too far, particularly when both market conditions and constitutional interpretations have changed.

Senator INOUYE. Thank you very much, Mr. Fritts. S. 329, the bill that you support in principle, also calls for a prohibition on any preemption and it has no exemptions to it. In other words, if there is some spectacular news break, you cannot preempt it, can you?

Mr. FRITTS. Well, if that in fact is true, then we did not fashion it as well as we should have. There should be that ability to preempt, I think, in that legislation.

For instance, if a spot was purchased within "60 Minutes" and a hurricane was coming into that community and the news program and weather people wanted to be on the air during that same time period, obviously you would want to be able to preempt that spot without being at risk or liable.

Senator INOUYE. We will have to clear up that language then, because there is a possibility. There is also—what about the Super Bowl going beyond the projected time?

Mr. FRITTS. I think any of those legitimate sports programs that could run over because of overtime or something of that nature or because of preemptions for a significant event in the community, we should take a logical approach to that and say, well, if that happens, it is not going to be done with the intent of disenfranchising the political spot that was bought in that program. Obviously, it would be made good at the next and first opportunity.

Senator INOUYE. Just as a matter of information, what percentage of a broadcaster's income is made up of this type of advertising?

Mr. FRITTS. Well, as you can appreciate, it is difficult to pin down. We have some broad estimates. In some stations it is zero, because they are not on the buy list for any candidates. And others,

I would say the average is ranging somewhere between 1.5 and 3 percent during a political year.

And in some instances where you have a significantly heated race, a New York race, a Texas race or something like that, that might bump up a little higher, particularly during the fourth quarter.

Senator INOUYE. So, it is not as large as some Senator contended?

Mr. FRITTS. Indeed it is not.

Senator INOUYE. Mr. Bartlett.

STATEMENT OF DAVID BARTLETT, PRESIDENT, RADIO AND TELEVISION NEWS DIRECTORS ASSOCIATION

Mr. BARTLETT. Thank you, Mr. Chairman. I am president of the Radio and Television News Directors Association, which is the principal professional organization of journalists who gather and disseminate the news on radio and television.

As such, the association takes public positions on matters that affect freedom of the press generally, but most particularly and especially, freedom of the electronic press. And I am here representing RTNDA here today in that role.

RTNDA does not intend today to argue about the constitutionality or desirability generally of Government regulation of the electronic media with respect to political advertising, or for that matter, anything else.

On first amendment grounds, however, let the record show that RTNDA opposes Government regulation of the content of radio and television programming.

Today, however, specifically, I want to discuss something that was alluded to a moment ago, a section of S. 329. We believe that this section would have an immediate and direct impact on electronic journalism.

Section 3 specifically includes a provision that would generally prohibit, as you pointed out earlier, broadcasters and cable operators from preempting political candidate advertising. This nonpreemption provision, as you know, would become Subsection (c) of Section 315 of the Communications Act.

Paragraph 2 of that subsection includes an exception for preemptions that occur because of "circumstances beyond the control of the broadcasting station." That is fine as far as it goes, but RTNDA is concerned that without some clarifying language, that may be construed too narrowly and it may exclude unscheduled and even emergency news programs of one sort and another that we do not believe should have to give way to previously scheduled programming that contains otherwise nonpreemptible political spots or even longer forms of political programming.

I would note that in the 101st Congress, the House Committee on Energy and Commerce approved a provision identical to the one which is now found in Senate 329. With report language, however, that helped clarify the point.

We are here today, however, to argue that it would be far preferable to make the point clear in the wording of the statute itself and not depend on the legislative history.

Attached to my testimony are proposed language changes that would exempt the coverage of news events, along with wording that would permit the carrying of sports events, like the Super Bowl, to conclusion.

I also am attaching to my testimony, with your permission, the pertinent sections of that House report with the clarifying language.

Other preemptions specified approvingly in the House report such as the preemption of local political spots in network programming preempted by the network and program changes made possible by technical difficulties—the transmitter goes out or whatever—would appear to be clearly enough covered in the bill's current exception for circumstances beyond the control of the broadcasting station.

To reiterate, however, the news and sports runover provisions are not clearly covered in the current language and we think they need to be. We do not believe, by the way, that this was the intent of the bill's sponsors. The origins of the provision and the House report on it strongly suggests, as a matter of fact, to us, that the proposed amendments, our proposed amendments, should be acceptable to the committee and to the bill sponsors.

But again I want to reiterate that a substantial first amendment issue would be raised if Congress were to prohibit the presentation of news programming at times when local stations and cable systems judge that it is in the public interest to present such programming.

The clarifying amendments that we propose would avoid the ambiguity that we find in the present wording and which you suggested earlier, Mr. Chairman.

Several other bills introduced in Congress have language identical to that in S. 329. One of those, S. 3, was recently favorably reported out by the Committee on Rules and Administration. The committee report on S. 3 mentions the nonpreemption provision, however, without reference to the exception in the bill for circumstances beyond the control of the broadcasting station.

If any campaign regulation bill with this provision should become law, we believe it should include amendments to accommodate news and sports runover programming, as we suggested for S. 329.

We propose one other language change in the exception provision. That change which is evident in our attached modifications would make it clear that the exception to non preemption applies to program length political material as well as to spot announcements. Both should be included.

Finally, I want to just briefly mention our proposed clarification to another bill before you today, S. 334. We are concerned that paragraph 1 of the bill's proposed new section 315(b) could be interpreted to apply to certain journalistic programming that may not qualify otherwise as an exemption to the use obligations in section 315.

Subsection (b) appears to be intended to apply to political advertising only. We think that is the intent. But paragraph 1, unlike the related provision in the subsection (c)(1) does not explicitly limit it to advertising only. It could, in other words, be construed to involve some sort of news coverage. We find that disturbing.

We urge that subsection (b)(1) be so limited by the addition of the same words, to refer specifically to political advertising, not to any kind of news coverage.

Thank you.

[The prepared statement of Mr. Bartlett follows:]

PREPARED STATEMENT OF DAVID BARTLETT

Mr. Chairman, my name is David Bartlett, and I am President of the Radio-Television News Directors Association.

RTNDA is the principal professional organization of journalists who gather and disseminate news on radio and television in the United States. The Association takes public positions on matters affecting freedom of the press, including the electronic press. I am here representing RTNDA in that role.

RTNDA does not intend to argue at this time about the constitutionality and desirability generally of government regulation of the electronic media with respect to political advertising. On First Amendment grounds, RTNDA opposes government regulation of the content of radio and television programming.

Today I wish to discuss at length only one section of 329, which could have an immediate and direct effect on electronic journalism.

Section 3 of S. 329 includes a provision that would generally prohibit broadcasters and cable operators from preempting political-candidate advertising. This non-preemption provision would become subsection (c) of Section 315 of the Communications Act. Paragraph (2) of the subsection includes an exception for preemptions that occur because of "circumstances beyond the control of the broadcasting station."

RTNDA is concerned that the exception, without clarifying language, may be construed too narrowly, to exclude unscheduled and even emergency news programs that should not have to give way to previously scheduled programs with otherwise nonpreemptible political spots or longer political programming.

We note that, In the 101st Congress, the House Committee on energy and Commerce approved a provision identical to the one in S. 329, with report language that helped to clarify this point (Report No. 101-871, Oct. 15, 1990, at p.12). It would be far preferable, however, to make the point clear in the wording of the statute itself. Our proposed language change to exempt coverage of news events, along with wording to permit also the carrying of sports events to their conclusion, is attached to my written statement, along with pertinent pages of the House Report that I just mentioned.

Other preemptions specified approvingly in the House Report, much as preemptions of local political spots in network programs preempted by networks, and program changes made necessary by technical difficulties, would appear to be clearly enough covered by the bill's current exception for "circumstances beyond he control of the broadcasting station." The news and sports run-over exceptions, however, are not clearly covered by the current language of the bill, and need to be.

We trust that it was not the intent of the bill's sponsors to do otherwise. The origins of the provision and the House Report on it strongly suggest that the amendments proposed by RTNDA should be acceptable to the bill's sponsors and the Committee.

A substantial First Amendment issue would be raised if the Congress were to prohibit the presentation of news programming at times when local stations and cable systems judge that it is in the public interest to present such programming. The clarifying amendments proposed by RTNDA would avoid the ambiguity of the bill's present wording.

Several other bills introduced in this Congress have language identical to that in S. 329's Section 3 to which we object. One of those bills, S. 3, was recently favorably reported out by the Committee on Rules and Administration. The committee Report on S. 3 (No. 103-41, April 28, 1993, at p. 56) mentions the non-preempt ion provision without making any reference to the exception in the bill for "circumstances beyond the control of the broadcasting station." If any campaign regulation bill with this provision is to become law, it should include amendments to accommodate news and sports-runover programming.

We propose one other language change in the exception provision. That change, which is evident in RTNDA's attached modification of the bill's proposed Section 315(c)(2), would make it clear that the exception to non-preemption applies to program-length political material as well as to spot announcements.

Finally, I want to briefly mention RTNDA's proposed clarification of the other bill before you today, S. 334. RTNDA is concerned that paragraph (1) of the bill's proposed new Section 315(b) could be interpreted to apply to certain journalistic pro-

gramming that may not qualify as an exemption from the "use" obligations of Section 315 (see Section 315(a)(1)-(4)). This subsection (b) appears to be intended to apply to political advertising only, but paragraph (1) of it, unlike a related provision in subsection (c)(1), is not explicitly limited to advertising. We urge that subsection (b)(1) be so limited by the addition of the same words referring to political advertising that already appear in the proposed subsection (c)(1). (See RTNDA's proposed modification, attached.)

Thank you for your consideration of RTNDA's concerns.

MODIFICATION

1. With respect to S. 329, RTNDA proposes that, in Section 3(3) of the bill, paragraph (2) of the proposed new subsection (c) of Section 315 of the Communications Act of 1934, as amended, be changed to read as follows (new matter in italics):

"(2) If a program to be broadcast by a broadcasting station is preempted because of circumstances beyond the control of the broadcasting station, *including the carrying of sports events to their conclusion and the coverage of news events,* any candidate advertising spot *or other candidate use* scheduled to be broadcast during that program may also be preempted."

2. With respect to S. 334, RTNDA proposes that in Section 2(2) of the bill, paragraph (1) of proposed new subsection (b) of the Communications Act of 1934, as amended, be changed to read as follows (new matter in italics; deleted matter bracketed):

"(b)(1) if any legally qualified candidate for any Federal elective office (or an authorized committee of any such candidate) who utilizes rights of access and conditions of access under the provisions of this Act uses a broadcasting station *to broadcast political advertising which [to] refers,* directly or indirectly, to another legally qualified candidate for that office, such reference shall be made in person by such legally qualified candidate."

[The report referred to, "Campaign Advertising Act," Rept. No. 101–871, may be found in the committee's files.]

Senator INOUYE. Mr. Bartlett, I thank you very much, because listening to you, I find your suggestions to be not only helpful, but, I believe, to be necessary. And I can assure you that we will look them over very, very carefully. Because, as Mr. Fritts said, he did not realize the possibility of prohibition or preemption covering every circumstance.

Mr. BARTLETT. Last night was a good example. We would have had to interrupt coverage of the thunderstorm to run a political spot if you read the law to the letter the way it is written. It is easy to fix we think.

Senator INOUYE. I think at that point, if I were the broadcaster, I would say, because of this law, we cannot tell you about the storm that is going to hit you. [Laughter.]

Mr. BARTLETT. I like your style, Senator.

Senator INOUYE. Ms. Crawford, in your experience, do you find that negative advertising has increased or has it stayed the same in the last 10 years?

Ms. CRAWFORD. I think it has increased. It is not the stations that have made that happen, because they do normally sell 30- and 60-second spots, but they have always had to sell longer length programming to Federal candidates, 5 minutes and or one-half hours. But many times it is the consultants who make that decision.

My experience has been that most of the candidates OK the ads before they go on the air. I think the candidate has to know what is being aired on his behalf.

Senator INOUYE. Several have observed that the more we spend on the media, the smaller the voter turnout. Is there any connection there with negative ads?

Ms. CRAWFORD. I frankly believe that the cost of campaigns could be held down if everything is targeted properly, according to the polling data. I think just overspending turns people off and they get tired of hearing about the political.

Senator INOUYE. It is not the negative ads?

Ms. CRAWFORD. Not necessarily. Because people do remember the negative ads. I think it is the proliferation of political advertising.

Mr. FRITTS. I think, Senator, if I am not mistaken, we did have an increase for the first time in a number of years in the voter turnout in this most recent election. As you know, the broadcasting industry has been involved in a number of get-out-to-vote campaigns, and we were very pleased to see that the electorate responded with an increasing interest in this particular election.

So, it certainly reversed the downward trend, and I am not sure if it was temporary or whether it was the beginning of a new trend.

Senator INOUYE. I think every 4 years we should ask Mr. Perot to run. [Laughter.]

Mr. FRITTS. Well, Senator, I was just digesting what these pundits said who were talking earlier—I do not know that I have the right terminology for them. They were talking about the fact that it is the station's fault that we have contracted the political candidates into a 30-second format. The fact of the business is that Bill Clinton used a very refreshing approach to the media this time as did Ross Perot.

I thought it was quite expansive in what they did in terms of using talk shows, in terms of using debate programs, in terms of using public affairs, and in terms of using any number of opportunities for media exposure. And those opportunities have been available all the while. It is just that oftentimes when we offer a debate between two candidates at a station's studios, one of the candidates says, "gee, I do not know that I want my opponent to have that much exposure, and so I will not be there," or "I have got a schedule conflict," or whatever it amounts to.

So, I think, broadcasters, universally, have offered a lot of free time to political candidates, much of which has gone unused.

Mr. BARTLETT. My experience as a journalist, Senator, for what it is worth, in answer to your question, is that negative ads have increased over time, and for a very simple reason—they work. I also would observe that the ebb and flow of voter turnout has more to do with the action in the campaign, the interest of the candidates, the number of candidates—as we discovered this last cycle—than it does with the advertising—good, bad, positive, negative, or almost entirely neutral.

Again, that is from an observer's point of view, not a participant's either in terms of selling ads or creating them. But I am concerned about any suggestion that puts the burden on broadcast stations or any other medium, for that matter, to save candidates from themselves. I think the voters should be called upon to respond positively or negatively to fine ads and fine candidates or

truly terrible ads by truly terrible candidates. And there are some of both.

Mr. FRITTS. You know, Senator, I heard Senator Packwood talk about what the newspapers did back in the olden days, and I have gone back through some of the references, and I find some of the negative ads today, while they may be considered harsh by today's standards, by the late-1800's standards, they are fairly mild—when Presidential candidates were called adulterers and horse thieves and any number of names. At least it is more thinly veiled in today's process.

In that context, broadcasters have absolutely no discretion in altering a candidate's ad, as you well know. We have to accept what is given to us, and play it in its entirety, with no alterations. And we do not have the right to turn it down, even if it is offensive, and in some cases, maybe even obscene.

Senator INOUYE. Mr. Fritts, you have the last word, because I have been told I have to go to the floor to vote. But I want to thank all of you. And may we call upon you to continue this dialog, because we intend to come out with some legislation?

In all likelihood, we will be going out with S. 329, but we want to make certain that all the T's are crossed and all the I's are dotted. We do not wish to make any mistakes, and least of all we do not want to make any constitutional mistakes.

With that, this hearing is adjourned, and we will keep the record open for 30 days if you wish to amend or augment or supplement your statements, feel free to do so.

Thank you.

Ms. CRAWFORD. Thank you.

Mr. FRITTS. Thank you, Senator.

Mr. BARTLETT. Thank you.

[Whereupon, at 4:30 p.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR PRESSLER

Mr. Chairman, thank you for holding this hearing today on campaign advertising reform. I want to congratulate you, our distinguished Committee Chairman and the distinguished Ranking Republican for your leadership roles in promoting legislation to help clean up campaigns.

I have long supported efforts to require candidates who mention their opponents in political campaign ads to make these statements themselves. I practiced this principle in my own campaign in 1990. I had a self-imposed requirement that I be on camera for the length of any commercial that even mentioned my opponent's name.

I did it looking straight into the camera—full face and no gimmicks—the entire time. It gave my media consultant a serious case of heartburn and probably cost me 10 points, but I'm proud I did it.

I never once allowed my media consultant to run an anonymous attack ad, even though there were dozens used on me. My opponent's name was never mentioned in an ad unless I said it myself. I think this added to the quality of the campaign.

But as proud as I am of my campaign, frankly, I don't think I would do it again by myself. As I said, it probably cost me ten points. Fortunately I had a few to spare. Next time I might not be so lucky. In the future, probably will be compelled to respond to that kind of garbage if we can't reach an agreement or set a standard of accountability for all candidates to follow.

Although I got many compliments for running a positive campaign, the fact remains that anonymous, negative attacks work. The only way to clean them up is by applying a fair standard across the board.

Personally, I would like to see candidates voluntarily agree to "speak for themselves totally." My own experience tells me it is unlikely that this will be agreed to. That is why I support clean campaign legislation.

LETTER FROM JAN ZISKA CRAWFORD, JAN CRAWFORD COMMUNICATIONS

JUNE 10, 1993.

Senator DANIEL K. INOUYE,
U.S. Senate,
Washington DC 20510–6130

DEAR CHAIRMAN INOUYE: First of all, I want to thank you again for the opportunity to testify before your subcommittee on behalf of S. 329. It is imperative that a more succinct and less cumbersome broadcast bill is enacted.

The following are additional remarks expanding my testimony for the Record. I also want to answer more completely the few questions you addressed to me and comment on earlier testimony from the preceding panel.

You first asked me about the use of negative commercials and whether I believed that they were, at least partially, to blame for the low voter turnout. In my answer to you I stated that I did not believe they in themselves were to blame. I believe there are negative ads and there are comparative ads. Negative ads use personal innuendoes and slurs against an opponent. Comparative ads cite both candidates records on a particular issue or if no record, then how one stands on that particular issue. Perhaps it should be required that if one candidate attacks another's record that the attacking candidate must state his or her record, if there is one, or how they stand on that issue.

I don't believe that it has to be stated that it is the candidate's consultant who develops the negative ads—not the television stations. And it is the candidate who approves them. As a political media consultant (though not on the producing end) I make it a point to know if a candidate has approved an ad or not. several years ago I worked with a well-known Democratic producer who told me that an ad had

been approved when the candidate had not seen it let alone approve it. Had he seen it, he most certainly would not have approved it. The thirty second spot began airing on a Friday and the campaign spent all weekend trying to reach the producer to pull it off the air. That was no only very arrogant but totally unprofessional of the producer because ultimately, it is the candidate who suffers and is held responsible.

I believe it is the proliferation of all ads and the duration of campaigns that has had the greatest impact on voter turnout. One can buy too much media time. Unfortunately the majority of today's political media consultants believe in the old adage "The more the merrier"—and it's more merrier on television. There is a point at which a candidate discourages voters from voting for them just because they (the voters) are sick and tired of seeing a candidate's commercials.

Rather than using polling data to develop and lay out a targeted media strategy, consultants "spend the money". This is very evident from the audits which I have been conducting for clients around the country. And as stated in my testimony, many rates in 1992 are lower than 1990 rates. And given the current law, it is the consultants who choose which rate to be paid—not the stations If you would like to see that documentation I would be happy to share it with you.

Campaign costs are rising because:

- Consultants pay more than they should because there is no incentive to keep costs down;
- They do not think strategically—such as using program length commercials (which I will address next); and
- The duration of a campaign is increasing.

Now, to earlier testimony. I must admit, Mr. Chairman, that I was stunned with the testimony of Charles Guggenheim. It has been law, for at least the twenty-three years that I have been working on campaigns, that stations must make program length time available to Federal candidates. He was dead wrong when he stated that stations will only sell thirty and sixty second ads. Again, as stated in my testimony, I have purchased numerous five minutes and half hour programs over the years. One must work with them, and sometimes push the point, but the law is very clear. I do believe that many consultants do not want to produce a five minute or half hour program, thus their clients never even have the discussion with them. A program length commercial can be more cost-effective than spots. However, since the consultants have no incentive to keep costs down, they would rather produce thirty and sixty second television commercials—they make more commission.

Mr. Chairman, it appears that very few Members of Congress and their consultants know or understand current law. Given this, I am forced to ask, if current law is not understood how can positive changes be made to correct problems? Also, in none of the bills before Congress are consultants held responsible for anything. Don't you think that if they are being paid to produce and, in many cases purchase the time, that they be held accountable for:

1) Ensuring that disclaimers and other specifics dictated by law are properly included in each commercial and program;

2) Rates paid and understanding the law; and

3) Reconciling media money received against media dollars spent on a station by station basis. These records should then be turned over to a campaign and be required to be kept for as long as a station is required to keep their political files available for the general public. Current law requires that communication entities must keep records open for two years.

Again, Mr. Chairman, thank you for the opportunity to testify and to expand my remarks. I care very much about making this process as easy as possible with clear lines of responsibility. I am available to you or your staff to assist in making this a reality. Mr. Chairman, working on campaigns use to be fun—it is no longer fun.

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ISBN 0-16-043400-9